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395 U.S. - 1861

Tuesday Dec. 10, 186

Submitted

SUPREME COURT OF THE UNITED STATES.

No. ~~376.~~ 4639.

EDMUND G. STILES, Pl'ff in Er., Chicago

vs.

SOLOMON DAVIS AND JOSEPH BARTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GIDEON, Printer.

Discussed

Nelson

SUPREME COURT OF THE UNITED STATES.

No. 276.

EDMUND G. STILES, Pl'ff in Er.,

vs.

SOLOMON DAVIS AND JOSEPH BARTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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The United States of America, Northern District of Illinois, sct.

Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, before the Hon. Thomas Drummond, Judge of the District Court of the United States in and for the Northern District of Illinois, sitting in the absence pro tempore of the Hon. John McLean, one of the Justices of the Supreme Court of the United States and Judge of said Circuit Court aforesaid, and on Saturday, the eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third year.

WM. H. BRADLEY, Clerk.

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

Be it remembered, that on the sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, said plaintiffs, by Davenport and Paddock, their attorneys, came into the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, and filed their precipe against said defendant, and thereupon sued out a summons in this behalf, which said precipe, summons, and the return of the marshal endorsed thereon, reads in the words and figures following, to wit:—

Precipe.

Northern District of Illinois, United States of America.

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES.

United States Circuit Court of the December term, A. D. 1857.

The clerk of said court will issue summons in the above entitled cause in a plea of trover returnable to the December term of said court to the damage of the plaintiffs of five thousand dollars.

DAVENPORT & PADDOCK,
Pl'ffs' Att'ys.

Chicago, Nov. 16, '57.

Endorsed: Filed Nov. 16, 1859.

WM. H. BRADLEY, Clerk.

Bond for Costs.

United States of America, Northern District of Illinois, ss.

Circuit Court, December term, A. D. 1857.

SOLOMON DAVIS and JOSEPH BARTON vs. EDMUND G. STILES. } In Trover.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against our property for any costs taxed against.

Dated this 16th day of November, A. D. 1857.

DAVENPORT & PADDOCK.

Endorsed: Filed Nov. 16, 1857.

WM. H. BRADLEY, Clerk.

Summons.

Circuit Court of the United States of America, Northern District of Illinois, ss.

The United States of America, to the marshal of the Northern District of Illinois, greeting: We command you that you summon Edmund G. Stiles, if he shall be found in your District, to be and appear before our Judges of our Circuit Court of the United States for the Northern District of Illinois, at the next term thereof, to be holden at Chicago, in the District aforesaid, on the third Monday of December next, to answer unto Solomon Davis and Joseph Barton in a plea of trover to their damage, as they allege, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 16th day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the 82d year.

[SEAL.] WM. H. BRADLEY, Clerk.

Marshal's Return.

I have served the within by reading the same to the within named Edmund G. Stiles, this 16th day of Nov., 1857.

J. H. DAVIDSON, U. S. M.

By J. C. BULLOCK, Deputy.

Endorsed: Filed Nov. 18th, 1857.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, said

plaintiffs, by their attorney, filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois their declaration in this behalf, which reads as follows, to wit:—

Narr.

Circuit Court of the United States for the Northern District of Illinois.

Of December term, A. D. 1857.

United States of America, Northern District of Illinois, ss.

Solomon Davis and Joseph Barton, who are citizens of the State of New York, plaintiffs, by Davenport and Paddock, their attorneys, complain of Edmund G. Stiles, who is a citizen of the State of Illinois, defendant, of a plea of trespass on the case.

For that whereas the said plaintiffs heretofore, to wit, on the fourteenth day of November, one thousand eight hundred and fifty-seven, at the city of Chicago, Cook County, State of Illinois, were lawfully possessed as of their own property of certain goods and chattels, to wit: Of twelve boxes, one trunk, and one bale, containing articles of merchandise denominated dry goods, of great value, to wit, of the value of four thousand dollars, lawful money of the United States. And being so possessed, the said plaintiffs afterwards, to wit, on the day and year, and at the place aforesaid, casually lost the said twelve boxes, one trunk, and one bale, containing the dry goods aforesaid, out of their possession; and the same afterwards, to wit, on the day and year, and at the place aforesaid, came to the possession of the said defendant by finding, yet the said defendant well knowing the said dry goods so contained in the said twelve boxes, one trunk, and one bale, and the said boxes, trunk, and bale containing said goods to be the property of the said plaintiffs, and of right to belong and appertain to them, but contriving and fraudulently intending, craftily and subtly, to deceive and defraud the said plaintiffs in this behalf, hath not as yet delivered the said twelve boxes, one trunk, and one bale of dry goods, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to wit, on the day and year last aforesaid, at Chicago aforesaid, converted and disposed of the said goods and chattels, to wit, said twelve boxes, one trunk, and one bale, containing dry goods as aforesaid, to his own use, to the damage of the said plaintiffs of five thousand dollars.

And whereas also the said plaintiffs heretofore, to wit, on the second day of November, A. D. 1857, at Janesville, in the State of Wisconsin, were lawfully possessed as of their own property of certain other goods and chattels of the like description, quality, quantity, and value, as in the said first count mentioned, and being so possessed, and being desirous of having the same transported and conveyed from Janesville aforesaid to Illion in the county of Herkimer, and State of New York, the said plaintiffs then and there, to

wit, on the day and year, and at Janesville last aforesaid, contracted and agreed with a certain transportation company doing business under the name and style of the "Union Despatch Company," through Scoville & Curtis, agents for said company at Janesville aforesaid, for the transportation and conveyance of said goods and chattels from Janesville to Illion aforesaid, for a compensation and price then and there agreed upon, and the said goods and chattels, to wit, said twelve boxes, one trunk, and one bale, so containing dry goods as aforesaid, in pursuance of said agreement were then and there delivered to said Union Despatch Company for transportation aforesaid, said boxes, trunk, and bale, being marked in characters "Diamond H," and were, on or about the day and year last aforesaid, despatched by railroad in charge of said Union Despatch Company for their destination aforesaid, to wit, Illion, in the State of New York, and the said goods and chattels, on or about the third day of November, A. D. 1857, arrived at Chicago, in the State of Illinois, en route from Janesville to Illion aforesaid, where, to wit, at Chicago aforesaid, they were received by and went into the custody and possession of the defendant, then and there being and acting as the agent of the said Union Despatch Company, and the said defendant having obtained the custody and possession of said goods and chattels in manner aforesaid, neglected and refused to forward and despatch them to their destination aforesaid, but, on the contrary thereof, he, the said defendant, retained the custody and possession of said goods and chattels, and the said plaintiffs, on the fourteenth day of November, A. D. 1857, at Chicago aforesaid, and while the said def't yet had such custody and possession, demanded of and from the said defendant the possession of the said goods and chattels, and the delivery of the same by him, the said defendant, to them, the said plaintiffs, yet the said defendant, well knowing the said dry goods so contained in the said twelve boxes, one trunk, and one bale, and the said boxes, trunk, and bale so containing said goods, to be the property of the said plaintiffs, and of right to belong and appertain to them, but contriving and fraudulently intending, craftily and subtly, to defraud and deceive the said plaintiffs in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to wit, on the day and year, and at the place last aforesaid, converted and disposed of the said goods and chattels to his own use, to the further damage of said plaintiffs of five thousand dollars, and therefore the said plaintiffs bring suit, &c.

DAVENPORT & PADDOCK, Plff's Att'ys.

Endorsed: Filed Dec. 4, 1857.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the twenty-third day of December, eighteen hundred and fifty-seven, the said defendant, by Smith and

Dewey, his attorneys, filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, his plea in this behalf, which reads in the words and figures following, to wit:—

Pleas.

Circuit Court of the United States for the Northern District of Illinois.

Of the December Term, A. D. 1857.

United States of America, Northern District of Illinois, ss.

EDMUND G. STILES
ads.
SOLOMON DAVIS and JOSEPH BARTON.

And the said defendant, by Smith and Dewey, his attorneys, comes and defends the wrong and injury, when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof in manner and form as the said plaintiffs have above thereof complained against him. And of this he puts himself upon the country, &c.

(The special pleas withdrawn by defendant Nov. 17th, 1858, see order of court of that date, page 65.)

And for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the goods and chattels mentioned and described in the first and second counts of the declaration of the said plaintiffs herein are not, nor were they at the time of alleged detention and conversion by the said defendant, the property of the said plaintiffs, but were the property of De Witt C. Davis and Darius A. Barton, before that time co-partners in business under the name, style and firm of Davis & Barton, and that the said plaintiffs procured from the said last named Davis & Barton, said property, goods and chattels by means of a conveyance or conveyances made by and between the said defendants herein, and the said last named Davis & Barton, with intent to hinder and delay, and defraud the creditors of the said last named Davis & Barton, the said defendants, and the said last named Davis & Barton contriving and designing by such conveyance or conveyances to hinder, delay and defraud the creditors of said last named Davis & Barton, and that while the said property, goods and chattels were in the possession of this defendant, and before the time of the alleged conversion of the said goods and chattels, to wit, on or about the 4th and 9th days of November, A. D. 1857, this defendant had been summoned as garnishee in two suits, in one of which Andrew M. Cameron, Justin A. Edwards, William R. Gilbert and Robert M. Boyd were the plaintiffs, and the said De Witt C. Davis and Darius A. Barton were

the defendants, and in the other, of which Amos R. Eno, Jonathan W. Roberts, Emerson Rhodes and Edward King were the plaintiffs, and the said last named Davis & Barton, defendants, both of which said suits were commenced in the Cook County Circuit Court by attachment. The said plaintiffs in each of said suits respectively caused an affidavit to be filed with the clerk of said Cook County Circuit Court, each of said affidavits setting forth, among other things, that the said last named Davis & Barton were indebted to the plaintiffs in each of said suits in a sum exceeding the sum of twenty dollars, specifying the nature and amount of such indebtedness, and that both of said last named Davis & Barton were not residents of the State of Illinois, and praying a writ of attachment against their property, and the said plaintiffs in each of said suits repectively caused bonds in double the amount specified in each of said affidavits with sufficient surety, to be filed with the clerk of said court in accordance with the statute in such case made and provided. That thereupon the said clerk issued writs of attachment in favor of the said plaintiffs respectively against the property of the said Davis & Barton last named, commanding the sheriff of said county of Cook, in the name of the people of the State of Illinois, among other things, to summon this defendant as garnishee, which said summons was served upon this defendant in the said suit in which Cameron and others were plaintiffs, on or about the 4th day of November, 1857, and in the said suit in which Eno and others were plaintiffs, on or about the 9th day of November, 1857, to which affidavits, writs of attachment, bonds and returns of sheriff on file in the office of the clerk of Cook County Circuit Court, this defendant begs leave to refer, as a part of this his plea, and this defendant further says that at the time of the alleged conversion of the said property, goods and chattels, in the said declaration mentioned, said garnishee, proceedings were and still are pending against this defendant, and that this defendant, when said service of garnishee process was made upon him, had the possession of the property, goods and chattels aforesaid, and that he thereupon detained the same as the property of the said last named Davis & Barton, which said detention is the same detention and conversion mentioned in the first and second counts of the declaration of the plaintiffs herein, and no other or different, and this the said defendant is ready to verify, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

(This plea withdrawn by defendant Nov. 17, 1858—see order of court of that date, page 26.)

And for a further plea in this behalf the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, saith that *that* the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the goods and chattels mentioned and described in the first and second counts of

the declaration of the said plaintiffs herein, are not, nor were they at the time of the alleged detention and conversion by the said defendant, the property of the said plaintiffs, but were the property of De Witt C. Davis and Darius A. Barton, before that time co-partners in business under the name, style, and firm of Davis & Barton, and that while the said property, goods, and chattels were in the possession of this defendant and before the time of the alleged conversion of the said goods and chattels, to wit, on or about the 4th and 9th days of November, A. D. 1857, this defendant had been summoned as garnishee in two suits, in one of which Andrew M. Cameron, Justin A. Edwards, William R. Gilbert, and Robert M. Boyd were the plaintiffs, and the said De Witt C. Davis and Darius A. Barton were the defendants; and in the other of which Amos R. Eno, Jonathan W. Roberts, Emerson Rhodes, and Edward King were the plaintiffs, the said last-named Davis and Barton defendants, both of which said suits were commenced in the Cook County Circuit Court by attachment. The said plaintiffs in each of said suits respectively caused an affidavit to be filed with the clerk of said Cook County Circuit, each of said affidavits setting forth among other things that the said last-named Davis and Barton were indebted to the plaintiffs in each of said suits in a sum exceeding the sum of twenty dollars, specifying the nature and amount of such indebtedness, and that both of said last-named Davis and Barton were not residents of the State of Illinois, and praying a writ of attachment against their property. And the said plaintiffs in each of said suits respectively caused bonds in double the amounts specified in each of said affidavits with sufficient surety to be filed with the clerk of said court in accordance with the statute in such case made and provided. That thereupon the said clerk issued writs of attachment in favor of the said plaintiffs respectively, against the property of the said Davis and Barton last-named, commanding the sheriff of said county of Cook in the name of the people of the State of Illinois, among other things, to summon this defendant as garnishee, which said summons was served upon this defendant in the said suit in which Cameron and others were plaintiffs on or about the 4th day of November, 1857, and in the said suit in which Eno and others were plaintiffs on or about the 9th day of November, 1857. To which affidavits, writs of attachment, bonds, and returns of sheriff, on file in the office of the clerk of Cook County Circuit Court, this defendant begs leave to refer as a part of this his plea.

And this defendant further says, that at the time of the alleged conversion of the said property, goods, and chattels in the said declaration mentioned, said garnishee proceedings were and still are pending against this defendant, and that this defendant, when said service of garnishee process was made upon him, had the possession of the property, goods, and chattels aforesaid, and that he thereupon detained the same, which said detention is the same detention and conversion mentioned in the declaration of the plaintiffs herein, and

no other or different, and this the said defendant is ready to verify, whereupon he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

(This plea withdrawn by defendant Nov. 17, 1858. See order of court of that date, page 26.)

And for a further plea in this behalf, the said defendant, by further leave of the court now for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that he admits as alleged in said second count of said plaintiffs' declaration, that twelve boxes, one trunk and one bale, marked Diamond H, came to his possession, as agent and joint proprietor of the Union Dispatch Company, who are common carriers in the ordinary course of their business, as such common carriers at Chicago, on or about the 3d day of November, A. D. 1857, but this defendant avers that while said goods were so in his possession at Chicago, in the county of Cook, and before they could be sent on from said Chicago, in the ordinary course of their business, to wit, on the 4th day of said November, at Chicago, in the county of Cook, this defendant was summoned as garnishee by the sheriff of the county of Cook, in a suit commenced in the Circuit Court for the county of Cook, in which Andrew M. Cameran, Justin A. Edwards, William R. Gilbert and Robert M. Boyd, were the plaintiffs, and Dewitt C. Davis and Darius A. Barton were the defendants, and this defendant was also afterward, to wit, on or about the 9th day of said November, and while said goods still remained in his possession, at Chicago, in said county, summoned again as garnishee, by said sheriff, in another suit in said court, wherein Amos R. Eno, Jonathan W. Roberts, Emerson Rhodes and Edward King were the plaintiffs, and the said last named Darius & Barton were also defendants. That both said suits were commenced in due form of law, by attachments issued by the clerk of said Circuit Court for the county of Cook, upon affidavits showing cause therefor, to wit, that said last named Davis & Barton were indebted to said plaintiffs in said suits respectively in sums exceeding twenty dollars, and that both said last named Barton & Davis were not residents of the State of Illinois and bonds duly filed in his office for that purpose. And this defendant further avers that the plaintiffs in both said suits in which this defendant has been summoned as garnishee, claim and pretend that the said goods and chattels mentioned in the several counts in said plaintiffs' declaration are the property of the said last named Davis & Barton; and this defendant further avers that said garnishee processes are still pending and undetermined in said court, and that he did not at the time of the alleged detention and conversion, nor does he now pretend or claim, nor has he at any time pretended or claimed, to have any interest or title to said goods and chattels, or any part thereof, but that this defendant detained said goods and chattels upon the service of said

garnishee process, and still detains the same, to await the award and decision of the said Circuit Court for the county of Cook, and for no other purpose. And this defendant further avers that this is the same detention and conversion mentioned and described in the said several counts of the said plaintiffs' declaration herein, and no other or different, and this the said defendant is ready to verify, whereupon he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

SMITH & DEWEY, Deft's Att'ys.

Endorsed: Filed Decb. 23, 1857. WM. H. BRADLEY, Clk.

And afterwards, to wit, on the thirtieth day of December, A. D. 1857, said plaintiffs, by Davenport & Paddock, their attorneys, come and file in the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, their replication as to the first plea of the defendant, and demurrer to the second, third and fourth pleas, which said replication and demurrer read in the words and figures following, to wit:—

Replication and Demurrer.

Circuit Court of the United States, for the Northern District of Illinois, of the December term, A. D. 1857.

United States of America, Northern Dist. of Illinois.

SOLOMON DAVIS & JOSEPH BARTON
vs.
EDMUND G. STILES.

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, do the like.

DAVENPORT & PADDOCK, Pl'ffs' Att'ys.

And the said plaintiffs, as to the said pleas of the said defendant, by him secondly and thirdly above pleaded, say that the same and the matters therein contained in manner and form, as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify, wherefore, by reason of the insufficiency of the said several pleas in this behalf, the said plaintiffs pray judgment and their damages by them sustained by occasion of the unjust detention and conversion of the said property, goods and chattels, to be adjudged to them, &c. And the said plaintiffs, according to the form of the statute in such case made and provided, state and show to the court now here the following causes of demurrer to the said second and third pleas. That is to say:—

First. For that the said several pleas, in manner and form as the same are above pleaded, amount to the general issue, and tend to great and unnecessary prolixity of pleading.

Second. For that the said several pleas are double, and contain a twofold answer to the said declaration, in this, to wit, that the said defendant hath thereby alleged and pleaded that the property, goods, and chattels in said declaration mentioned were not the property of the said plaintiffs at the time of their alleged conversion by the defendant; and also that he, the said defendant, was justified in the detention of said property under certain garnishee summonses in the said several pleas mentioned. And also that the said second and third pleas are in other respects informal, uncertain, and insufficient, &c. DAVENPORT & PADDOCK, Pl'ffs' Att'ys.

And the said plaintiffs, as to the said plea of the said defendant by him lastly above pleaded, say, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same; and this they, the said plaintiffs, are ready to verify; wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment, and their damages by them sustained by occasion of the unjust detention and conversion of the said property, goods, and chattels, to be adjudged to them, &c.

DAVENPORT & PADDOCK, Pl'ffs' Att'ys.

Endorsed: Filed Dec. 30, 1857. WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-eight, of the October adjourned term of said court, for the year last aforesaid, in the record of the proceedings of said court in said cause is the following entry, to wit:—

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

Now comes on to be heard the demurrer of the plaintiff to the defendant's special pleas, which, after argument by counsel, is taken under advisement by the court.

And afterwards, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, in the said adjourned October term of said court, for the year last aforesaid, in the record of the proceedings of said cause in said court is the following entry, to wit:—

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

The court having fully considered, and being now fully advised upon the demurrer of the plaintiffs to the defendant's special pleas heretofore submitted herein, sustains the same, with leave to the defendant to withdraw his special pleas, and file an additional plea.

And afterwards, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and fifty-nine, in the March adjourned term of said Circuit Court, in the record of the proceedings of said court in said cause is the following entry, to wit:—

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

Now come the parties, by their respective attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit, Selby Leach, Henry Dupuy, J. D. La Rue, James Toohey, William Thomas, Thomas Robinson, James Garfield, James L. McKie, James S. Steen, William Johnson, Charles W. Chase, and M. A. Mulliner, who were duly elected, tried, and sworn, well and truly to try said issue, and after hearing the evidence and part of the argument of counsel, the hour of adjournment having arrived, the further hearing of this cause is postponed until to-morrow morning.

And afterwards, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, in the said March adjourned term of said court aforesaid, for the year aforesaid, in the record of the proceedings of said court in said cause is the following entry, to wit:—

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

Now come again the parties by their attorneys, and now come also the jury heretofore empanelled in this cause, and after hearing the concluding arguments of counsel, and receiving instructions from the court, the jury retired to consider of their verdict, and after a short absence the jury returned into court the following verdict, to wit: "We, the jury, find the defendant guilty, and assess the damages of the plaintiff at the sum of three thousand and forty-one dollars and fourteen cents." Whereupon the defendant, by his attorney, moves the court for a new trial herein.

And afterwards to wit, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, in the said March adjourned term of said court aforesaid, for the year aforesaid, in the record of the proceedings of said court in said cause, is the following entry, to wit:—

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Trover.

Now comes on to be heard the motion heretofore made herein for a new trial of this cause, and the court, after hearing the arguments of counsel, overrules said motion.

It is thereupon considered and adjudged by the court that the plaintiffs have and recover of the defendant the said sum of three thousand and forty-one dollars and fourteen cents, their damages so as aforesaid found and reported by the jury, together with their costs by them about their suit in this behalf expended, amounting to the sum of seventy-nine dollars and seventy-seven cents, and that they have execution therefor.

And afterwards, to wit, on the eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine, the following bill of exceptions, taken in said cause on the trial thereof, were filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, to wit:—

Bill of Exceptions.

United States of America, Northern District of Illinois.

Circuit Court of the United States for the 7th Circuit and Northern District of Illinois. Of the May term, A. D. 1859.

EDMUND G. STILES
ads.
SOLOMON DAVIS and JOSEPH BARTON. } Trover.

Afterwards, to wit, at the court-house, in the city of Chicago, in and for the Northern District of Illinois, on the eighth day of June, A. D. 1859, before Honorable Thomas Drummond, District Judge, holding said court, came to be tried the said issue before a jury for that purpose duly empanelled.

The plaintiffs, to maintain the issue on their part, offered the deposition of Gideon W. Davenport, to which no objection was made by the defendant.

Circuit Court of the United States for the Northern District of Illinois. Of December Term, A. D. 1857.

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES. } Case No. 340, on Dec. and Jan'y Trial docket, A. D. 1858–9.

The taking of the testimony on the part of plaintiffs and defendant having been by order of the court this day entered referred to a commissioner, it is hereby stipulated that the same be taken before O. R. W. Lull, Esq., notary public; to be taken and returned by

him with the same effect as if taken before and returned by a commissioner.

DAVENPORT & PADDOCK, Pl'ffs' Att'ys.
SMITH & DEWEY, Def't's Att'ys.

Dated January 20, 1859.

Gideon W. Davenport's Deposition.

The deposition of Gideon W. Davenport and Shubal W. Smith, witnesses of lawful age, produced, sworn and examined upon their corporal oaths, on the 20th day of January, 1859, at the office of O. R. W. Lull, in the city of Chicago, in the county of Cook, and State of Illinois, by me, O. R. W. Lull, a notary public in and for said city of Chicago, under and by virtue of the stipulation hereto annexed for the examination of said witnesses, in a certain suit now pending in the Circuit Court of the United States for the Northern District of Illinois, wherein Solomon Davis and Joseph Barton are plaintiffs, and Edmund G. Stiles is defendant, in behalf of the said plaintiffs, as well upon the cross-interrogatories of the defendant as on the interrogatories of the plaintiffs. The Gideon W. Davenport and Shubal W. Smith, being first duly sworn by me, previous to the commencement of his examination, to testify the whole truth as far as they should be interrogated in relation to the matter in controversy, Gideon W. Davenport, a witness of lawful age, being duly sworn on the part of said plaintiffs, saith: I am one of the attorneys for the plaintiffs in this suit, reside at Chicago, and am one of the firm of Davenport & Paddock, attorneys in said cause for the plaintiffs. (Declaration in the case handed to witness.)

Interrogatory. Do you know the defendant in this suit, Edmund G. Stiles?

Answer. I do.

Interrogatory. What was his business, and where was his residence in November, 1857? and did you make a demand upon him, prior to the commencement of this suit, and if so, at what time, relative to the delivery of the goods mentioned in the declaration in this case? and if so, state what occurred and was said upon the occasion of such demand.

(Defendant, by his counsel, objects to this question generally.)

Answer. The defendant, Stiles, at that time had his office for doing business on Dearborn street, between Lake and South Water, in the city of Chicago. His business was that of transportation of goods and merchandise, etc., from one section of the country to the other, and was doing business under the name of the Union Despatch Company. A short time previous to the commencement of this suit, I am unable to state the exact time, I made a demand on Mr. Stiles, on behalf of the plaintiffs in this case, for the goods mentioned in a certain receipt which I then had handed Mr. Stiles, and which are the same goods described in the declaration. (To this last clause defendant, by his counsel, objects, as being a voluntary statement.) The receipt which I handed him is the same now produced here by

me. (Receipt produced, and marked by commissioner Exhibit "A.") I handed this receipt to the defendant, Mr. Stiles, and demanded of him the goods. Mr. Stiles replied, after looking over the receipt, that he had the goods, or had stored them, but should not deliver up the goods, assigning the reason that he had been garnishee in another suit. I do not recollect the parties to the suit. He stated that he should not deliver the goods on my demand, but should hold them till the garnishee suit was decided.

Interrogatory. Did he, defendant Stiles, at the time you made the demand for the goods referred to, state to you who the parties to the suit or suits in which he was summoned as garnishee were? If so, state the same.

Answer. I do not recollect that he stated the names of the parties.

Interrogatory. At the time you made the demand upon the defendant for the goods in question, do you personally know, or did the defendant then tell you where the said goods then were, and what was said by him in reference to that subject?

Answer. I am unable to state his precise language, but the substance of it was that they were in his possession or under his control.

(Defendant by his counsel objects to the answer.)

Interrogatory. Did he state at what place the goods were at that time?

Answer. I do not think he stated the specific place, but I think he said they were in a warehouse or stored.

Interrogatory. Where was the warehouse in which the goods were stored?

Answer. Don't recollect that he stated.

Interrogatory. When you showed the defendant the receipt marked Exhibit "A," and demanded the goods in question, what did the defendant say, if anything, in regard to the manner in which the goods in question came into his possession, how, and when?

Answer. I do not recollect distinctly what was said on the subject; my impression is that when I went in I had this exhibit marked "A" in my hand, and demanded the goods described in this receipt shipped from Janesville, Wisconsin, to Illion, New York, and I handed him the receipt, and he looked it over and said those were the goods that he had, and refused to deliver them up. I do not think that he volunteered a statement as to how they came into his possession.

Cross-examination.

The witness says the defendant was a common carrier. He claimed no personal interest in the property, but claimed that he was protected under the garnishee process.

Cross-interrogatory. In what suit was the garnishee process served?

Answer. I do not recollect, if I ever knew.

Cross-interrogatory. Who did you understand the defendants to be in those garnishee suits?

(Question objected to by plaintiffs' counsel.)

Answer. I do not know the Christian names of the defendants, but understood it to be young Barton and young Davis.

Interrogatory. Did you have any order from the pl'ffs in this suit for the goods?

Answer. I had no written order; my recollection now is, that at the time these goods were demanded I was acting under the direction of Mr. Cooley, who was, or claimed to be, the attorney of the plaintiffs in this case, Davis and Barton.

Interrogatory. Where do the plaintiffs live?

Answer. I think they live at Garretsville, N. Y.; we have received letters from them post-marked at that place. I have no personal knowledge of their residence.

Interrogatory. Had you seen either of the plaintiffs at the time of the demand?

Answer. I do not think I had.

Interrogatory. Had either young Davis or Barton had any interview with you in regard to the goods prior to the demand?

(Plaintiffs object to question.)

Answer. I do not recollect.

Interrogatory. Did not one of the them speak to you about the goods before Mr. Cooley, and did Mr. Cooley speak to you about them prior to the demand?

Answer. I do not recollect of having any conversation with either young Davis or Barton prior to the demand, but distinctly recollect of having a conversation with Mr. Cooley, and it was after consultation with Mr. Cooley, and under his directions, that I made the demand.

(Latter part of answer objected to by defendant's counsel as being volunteered.)

Interrogatory. Have you had any interviews or correspondence with young Davis or Barton in regard to the goods or this suit?

Answer. I never have individually that I recollect. I think that Davenport and Paddock have received some letters from young Davis or young Barton, I do not recollect which; I think it was in regard to the suit, as how it was progressing, &c.

G. W. DAVENPORT.

Exhibit "A" referred to in foregoing deposition, reads in the words and figures following, to wit:—

Union Despatch Company, E. G. Stiles & Co., Proprietors, General Western Office 13 *Dearborn Street, Chicago, Ill.*

No. Janesville, Wis., Nov. 2, 1857.

Received in store from Benjamin Cooley, att'y for Solomon Davis and Joseph Barton, 12 boxes, 1 trunk, and 1 bale dry goods, to be

forwarded to Illion, Herkimer Co., N. Y., at $2 15 per 100 lbs, subject to the order of Solomon Davis and Joseph Barton, upon the surrender of this receipt and payment of charges. Loss by the elements at owners risk. SCHOFIELD & CURTIS,
Agents.

Duplicate of this given to B and C.

They also offered in evidence a deposition of Shuball W. Smith, to the introduction of which the said defendant, by his counsel, objected on the ground of the interest of the said Smith, and also to the reading of the exhibits marked "B," "C," "D," and "E," to said depositions attached on the ground that the same were incompetent and improper to be submitted to the jury, each of which objections the said judge overruled and allowed the said deposition and exhibits to be read to the jury, to which decision of the said court the said defendant, by his counsel, did then and there except.

Deposition and Exhibits of Shubal W. Smith.

Counsel for plaintiffs then produced Shuball W. Smith, and offered him as a witness on the part of the plaintiffs, and the counsel for the defendants then objected to him on account of being interested, and desired him sworn on his voir dire, which was done; and being duly sworn on his voir dire, saith :—

Interrogatory. Were you the assignee of the younger Davis & Barton, being Dewitt C. Davis and Darius A. Barton?

Answer. I was.

Interrog. Did the title to the property in controversy in this suit come through you as such assignee?

Answer. It did.

Interrogatory. Were you the general assignee for the benefit of creditors? (Counsel for pl'ffs objects to question on the ground of the evidence being secondary.)

Answer. I was.

(Plaintiffs' counsel objects to the whole of the foregoing interrogatories and answers.)

The witness was then sworn in chief, and, being duly sworn, deposeth and saith to the several interrogatories as follows :—

Interrogatory. What is your age, residence, and occupation?

Answer. My age is thirty-nine years; Janesville, Wisconsin, is my residence; my occupation is taking care of my own property.

Interrogatory. Do you know the parties to this suit, or any of them? and if so, which, and how long have you known them?

Answer. I know the plaintiffs, Solomon Davis and Joseph Barton; my first personal acquaintance with them commenced in October, 1857.

Interrogatory. Look upon this paper now handed to you, purporting to be a bill of sale of the property in question (paper offered in evidence and hereto annexed, marked Exhibit "B" by the com-

missioner), and state whether the same was executed by you. (Defendant's counsel objects to introduction and admission of paper in evidence, on the ground that it does not purport to convey the property described in the declaration, and also that it is incompetent as evidence.

Answer. I did execute it. (Said paper was introduced and offered in evidence by plaintiffs' counsel.) (Defendant's counsel objects to its admission.)

Interrogatory. Did you sell and deliver to the plaintiffs in this suit the goods described in the paper marked Exhibit "B" at the time and place in the said paper stated? and did you at that time and place have possession of the goods mentioned in the said paper marked "B"? (Plaintiffs' counsel waives the question, defendant's counsel having objected to the same on the ground of being leading.)

Interrogatory. Did you at any time in the fall of 1857, sell to the pl'ffs in this suit any goods or personal property? (Def'ts counsel objects to this question as being leading.)

Answer. I did.

Interrogatory. When was the said property sold, and what was it? and were there any writings executed in regard to the sale?

Answer. I did sell them some property; the property was sold on the 30th day of October, 1857; it consisted of a general stock of dry goods, and also of a number of accounts due to Davis & Barton against persons living, or supposed to live, in Otsego County, in the State of New York; a bill of sale of the goods and accounts was rendered and receipted; the paper shown me, and marked Exhibit "B," is the bill of sale made on said sale and so referred to by me.

Interrogatory. Who had the possession of the goods mentioned in said bill of sale at the time of the sale? With whom did you negotiate the sale, and to whom did you deliver the goods in pursuance of the sale?

(Def'ts counsel objects to the question generally.)

Answer. I had possession of the goods as assignee of Davis & Barton; I sold them to Solomon Davis and Joseph Barton, the plaintiffs in this suit, through their agent, B. M. Cooley; I negotiated the sale with B. M. Cooley, as agent of the plaintiffs, and delivered them to him as their agent or attorney.

Interrogatory. What was the value of the goods sold and delivered by you to the plaintiffs upon the occasion spoken of?

(Defendant's counsel objects to the question, on the grounds that the goods sold do not purport to be the goods described in the declaration, nor is their value at the time of sale competent proof in this suit.)

Answer. Two thousand seven hundred and seventy-nine dollars and eighty-four cents.

(Defendant's counsel objects to the answer to last interrogatory, on the ground as he, counsel, states that the witness read the amount

from the bill of sale above referred to, and desires the commissioner to state such fact of the reading from the bill of sale, which the commissioner declines to state herein. He also desires the commissioner to state that the witness took up the bill of sale and examined the same, as if reading it, before he gave his answer, and the commissioner declines making any statement outside of the evidence in relation to the transaction.)

Interrogatory. What became of the goods mentioned in Exhibit "B" after sale to the plaintiffs, so far as you know?

Answer. They were boxed in the store, with the exception of a bale or two of bats, or something of that sort, all marked and delivered to draymen, and by them taken towards the railroad depot.

Interrogatory. How were these boxes marked?

Answer. They were marked Diamond H. Illion, Herkimer County, New York.

Interrogatory. How many boxes or packages of these goods were there?

Answer. I do not know.

Interrogatory. Can you state about how many?

Answer. About a dozen. There might have been more; I only state it from my recollection from seeing them packed, and laying about the store after they were packed.

Interrogatory. Do you know by what line or transportation company the said goods were shipped? If so, state.

Answer. I do not.

Interrogatory. Where did the plaintiffs live at the time of this sale?

Answer. I cannot answer this directly; I do not know of my own personal knowledge; I understand that they live at Garretsville, Otsego County, N. York.

Interrogatory. Where did Benjamin M. Cooley reside at the time of the sale?

Answer. In the city of Janesville, Wisconsin; Mr. Cooley is dead; he died, I think, in January, 1858.

Interrogatory. Are you acquainted with the handwriting of the plaintiffs in this case, respectively, Solomon Davis and Joseph Barton?

Answer. I am.

Interrogatory. State what you know of the place of residence of Sallie M. Davis.

Answer. I know that she is said to reside at Garretsville, Ostego County, New York.

Interrogatory. Is she related to the plaintiffs, or either of them?

Answer. She is said to be the daughter of Solomon Davis.

Interrogatory. Look upon the papers now shown to you, and state whether the names of Solomon Davis and Joseph Barton attached to said papers, as subscribing witnesses and as principals, are their signatures.

Answer. I believe them to be their signatures. (Papers offered in evidence and marked by commissioner "C" and "D.")

(Defendant's counsel objects to admission of same on the ground, 1st, of their being incompetent evidence; 2d, on account of their not being properly proved.)

The papers marked "C" and "D," offered in evidence, are withdrawn by plaintiffs' counsel.

Therefore defendant's counsel withdraws his objection to admissibility of said Exhibit "C" and "D," and the same are reproduced by plaintiffs' counsel, offered in evidence, and admitted and attached hereto marked as above.

Interrogatory. You have stated that you sold the goods in question to the plaintiffs, as assignee of Davis and Barton, viz., of Dewit C. Davis and Darius A. Barton; was the instrument making you assignee in writing, and have you it with you?

Answer. It was in writing, and I have it with me. (The witness here produces a paper in writing purporting to be an assignment from De Witt C. Davis and Darius A. Barton, to the witness, the execution of which is admitted to have been made by the respective parties as in the said assignment appears, and which is offered in evidence by the plaintiffs, and is hereto annexed and marked by the commissioner "Exhibit E.")

(Defendant's counsel objected to the admission of the instrument in evidence.)

Interrogatory. Did you take possession of any property under the assignment marked Exhibit "E?" If so, what portion; what did you do with it, and did you sell any portion thereof to the plaintiffs in this suit, and if so, what portion?

(Defendant's counsel objects to the question.)

Answer. I believe I took possession of all the property mentioned in the assignment and inventory annexed. I sold a portion of it from the store of retail and jobbing, the balance I sold to the plaintiffs in this suit amounting to two thousand and eight hundred and forty-eight dollars and sixty-one cents, and being the same goods and accounts mentioned in "Exhibit B."

Interrogatory. What was the consideration of the sale of the property mentioned in "Exhibit B."

Answer. I received as cash, by agreement, the preferred paper under the assignment, first, to receive all notes or claims preferred in the assignment to other parties than to the said Solomon Davis and Joseph Barton.

Interrogatory. Were or were not the amounts credited on the bill of sale marked Exhibit "B" received by you as the consideration for the said sale?

(Defendant's counsel objects to the question.)

Answer. They were.

Interrogatory. The amounts so credited appear to be in notes and

other vouchers, have you those notes and vouchers in your possession? and if so, produce them.

(Objected to by defendant.)

Answer. I have them in my possession, and I produce them here. (Ten notes and one receipt produced, and marked, by commissioner, Exhibit F, and all of them numbered from one to eleven, inclusively, and annexed hereto.)

Cross-examination.

I came west to reside in 1843, and have resided west ever since; I have never before been assignee; I have been since for T. A. Kimball, of Janesville, Wisc. Firm of Davis & Barton did business at Janesville. The plaintiffs were fathers respectively of my assignors. From reputation I know that Mr. Barton, the plaintiff, was a hotel keeper at the time of the purchase, and previous also a farmer, and Davis, the plaintiff, was a man worth a few thousand dollars in money, and lived upon what he could make for that in speculating and buying produce, &c. I first saw the plaintiffs at Janesville a short time not more than a day or two or three previous to this assignment; they were both there; I saw them both there; I was first spoken to in the evening I think, or the afternoon of the day on which the assignment was dated or bears date. I presume the assignment was executed on the day it bears date; if it had been dated on any other day, I think I should have noticed it. De Witt C. Davis spoke first to me about it; I do not know what he said, except to ask me if I would be assignee. I answered I did not care to do it, but he urged me to do it; as it was difficult to get an assignee, I consented. I talked with no other person than De Witt C. Davis with regard to any assignment; I do not know that anything was said in reference to a previous assignment, but I am inclined to think that he may have said that there had been a previous assignment to the plaintiffs which was void as they lived out of the State. Davis and Barton, the assignors, were retail merchants in the city of Janesville, Wisc., previous to the assignment; they had been engaged in business a year or more there. (Plaintiffs here object to any evidence touching matters connected with the assignment, except as to the sale of the goods in question by the assignee to the plaintiffs on the ground that the defendant in this action cannot question the validity of the assignment.) I should think from three to six hundred dollars of the debts due to them from their Janesville business came into my possession, as assignee, from the assignors; they claimed to do a strictly cash business.

Interrogatory. Did the preferred indebtedness in the assignment include their indebtedness for merchandise, and, if so, how much of it?

(Pl'ffs object to the question on the grounds of incompetency and irrelevancy.)

Answer. I do not know.

Interrogatory. About how much did Davis and Barton, the assignors, owe, that came to your knowledge, over and above the preferred indebtedness?

(Pl'ffs' counsel objects to the question.)

Answer. I do not know.

Interrogatory. Give your best judgment and remembrance of the amount that came to your knowledge.

(Pl'ffs' counsel objects to the question.)

Answer. Five thousand dollars, or more or less. The amount of goods that came to my hand, as assignee, was six thousand six hundred and thirty-three dollars. I realized from the assets assigned to me, prior to the sale to the plaintiffs, not far from three thousand dollars.

Interrogatory. What did you do with that money?

(Pl'ffs' counsel objects to the question.)

Answer. I paid it upon the preferred claims under the assignment. I paid nothing to the plaintiffs in this suit from the amount received previous to the sale. I paid to the Central Bank of Wisconsin the amount mentioned in the assignment, being about a thousand dollars. I paid to Naaman Moore, at the Oneida Bank, Utica, five hundred dollars, and interest and exchange. I paid to John P. Hoyt & Co., of Janesville, about two hundred dollars. I paid to George E. Jones, of Janesville, Wis., about fifty dollars. I paid to John R. Beall about one hundred dollars. I paid to Henry McKinney, of Janesville, about fifty dollars. I paid Charles E. Davidson's acceptance of about one hundred dollars. I paid to Amasa Orlup about twenty-five dollars. I paid to A. H. Fisher about forty dollars. I paid to E. J. Fenton about fifteen dollars. I think I paid Mr. Haas about thirty-five dollars. I paid to Leoni H. Davis about one hundred and two dollars. I paid to Charles Holt about twelve dollars. I paid to Platt Inglesham about fifteen dollars. I do not now recollect anything more, but I do know that I paid out all I received except the costs and charges. I have not made my charges as yet as assignee. I have no money in my hands belonging to the assigned estate. I paid to Cooley, on preferred paper, three hundred and seven or seventy-seven dollars; it was on paper belonging to Solomon Davis or Joseph Barton, or both, and he receipted for it as attorney for them. The voucher for this is in my valise at my hotel, I think. I think I can produce it, and will if I can. I do not know that I can tell on which voucher the endorsement was made. I sold to the plaintiffs through their agent, Cooley, two notes, one of them against, as I think, R. M. Smith, for something over $300, and another against Jungle & Orr for about $200, both of them secured by mortgages on real estate lying somewhere in northern Wisconsin. I sold them the two notes for somewhere about $350. I took up with the proceeds some of the preferred paper, which I will produce in the morning if I can. I think this is all that I ever gave to the plaintiffs. I never gave anything to the assignors, except for their services

in the store after the assignment, which, I think, was at the rate of about forty dollars per month. I will not swear that I did not pay them fifty dollars per month, but I will swear that I did not pay them one hundred dollars per month. I swear I did not pay them sixty dollars per month, and I think I paid them forty. They were in my employ, Davis about forty days or less, and Barton about fifty days or less. Mr. Cooley first spoke to me about purchasing the balance of the stock for the plaintiffs in the store. He came to me and asked how much I would sell the stock for without saying whom he wished to purchase for. I named the price that I would sell for, viz., eighty cents on the dollar, New York costs. He inquired what I would receive in payment, and I told him money. The same day, or the next, we had another interview, and he stated that he wished to buy the stock for the plaintiffs, saying that he was authorized by them to buy at eighty cents on the dollar, New York cost. He then asked me if I would received preferred paper for the goods. I answered that the goods were to be sold for cash, that I supposed that the preferred paper was cash, and could be received as such, provided that all the preferred paper preferred to parties other than the pl'ffs was first paid; this was all that transpired at that time. I should think within a day or two from that time he came to me and stated that he was authorized by the plaintiffs to purchase the goods on my proposition for them; that closed the trade, and we commenced taking an inventory the same evening. The plaintiffs gave me a stipulation in writing, allowing me to pay all preferred debts previous to paying theirs; this was given two or three days after the assignment. (Pl'ffs' counsel objects to the witness testifying to the contents of the writing.) Defendant's counsel give pl'ffs oral notice to produce this writing referred to, and pl'ffs' counsel accepts such oral notice as sufficient. (The witness desires to correct his statement in relation to the notes of Jungle & Orr and R. M. Smith, and saith), I have examined my papers since that statement was made, and find as follows: The note of Jungle & Orr is $325, and of R. M. Smith is $308, and they were sold for the sum of five hundred and twenty-five dollars. The amount that I paid Cooley before referred to was three hundred and seven dollars and seventy-seven cents, and in payment I received a note to Solomon Davis, on which was due eight hundred and twenty-one dollars and ninety-eight cents, which note is here produced marked Exhibit G; also ten dollars and seventy-nine cents, being the balance due on another note to the same party. I think I paid between three and four hundred dollars as expense account, for which I have vouchers. I have no funds for the payment of the general creditors not preferred, nor have I paid them anything, nor is there any probability of my being able to pay them anything. I think the bill of sale marked Exhibit "B" is in the handwriting of De Witt C. Davis, except the signature. I took the inventory, assisted by the clerks in the store, Davis and Barton, the assignors, and I think by John S. Parker. The plaintiffs were

neither of them there during the negotiation for sale, and were, as I understood, at Garretsville. It would take in the ordinary course of communication between Janesville and Garretsville to communicate and receive answer by mail; my opinion is that the trade was agreed upon, and we commenced taking inventory on the evening of the 29th of October, 1857, and that the inventory was completed on the 30th, and that bill of sale was executed on the 30th or 31st. I can't say whether Mr. Cooley had the powers of attorney, or showed them to be prior to the sale. He told me that he had authority. I first saw the vouchers marked Exhibit "F" in my office in the actual possession of B. F. Cooley, on the 30th or 31st day of October, 1857. I know nothing of my own knowledge of the consideration of these vouchers and notes marked Exhibit "F." De Witt C. Davis left Janesville for the east about the time the goods left. Nor has he nor Barton, the assignors, resided in Janesville since the sale. Barton may have remained there about three weeks subsequent to the sale, about ten days of the time in assisting me in collecting accounts. I paid after the sale three hundred and seven dollars and seventy-seven cents above referred to to Mr. Cooley, after the sale, but I do not know whether it was collected after the sale or before. I may have paid some of the small preferred creditors residing in town after the sale. I know I paid some of the expense accounts, and also transferred the notes above referred to Cooley, and received in return the note marked Exhibit "G." That exhausted the assets except a small amount of accounts, except two or three hundred dollars which I consider of no value. There was an error in extending the amount or footing same in the bill of sale to the extent of eighty-eight dollars and seventy-seven cents, which was corrected by deducting from the bill, as appears on its face. The extensions on the bill are the New York cost prices.

Interrogatory. Do you know whether the goods claimed to be converted by the defendants are the same goods mentioned in the bill of sale?

(Objected to by plaintiffs' counsel as being indefinite and uncertain.)

Answer. I suppose they are, but do not know of my own knowledge.

Interrogatory. Have you ever seen the goods mentioned in the bill of sale, or any portion of them, in the possession of the defendant?

Answer. I have not. I do not know of my own knowledge anything about the goods being in the possession of defendant, nor did I to my knowledge ever see the defendant. Davis packed his household goods in the back room of the store, not in the boxes that I had reference to as being packed with goods. There may have been some household goods or articles of Davis's put into the boxes, but not to my knowledge. All of the articles mentioned in the bill of sale except the bats were packed in the boxes. One bale of the bats was shipped, and sent with the balance of the goods. The

other bats were sold by Mr. Cooley. I am and was a merchant. I am not now engaged in selling goods personally, but purchase goods to be sold by my agent.

Interrogatory. Will you swear that the goods at the demand were worth twenty-seven hundred, seventy-nine, and eighty-four cents?

Answer. I know nothing of the goods at the time of demand, nor when the demand was made.

Interrogatory. Did you not, in answer to direct interrogatory as follows: "What was the consideration of the sale of the property mentioned in Exhibit B?" at first in substance state what the plaintiffs authorized you to pay the preferred paper, other than that preferred to the plaintiffs first, and then, upon the suggestion of counsel for pl'ffs used the word *consent* instead of *authorize*, alter your phraseology to *consent*, and finally leave it out altogether, and desire the commissioner not to take that answer down, and gave the one that was finally taken down?

(Plaintiff's counsel objects to question, as being impertinent.)

Answer. No.

(Plaintiffs here propose to re-examine the witness, defendant having closed; and to such re-examination defendant by his counsel excepts.)

Interrogatory. What was the date, and, as far as you were able to ascertain, the value of the Garretville accounts that you sold to the plaintiffs at the time the goods were sold?

(Def't's counsel objects to question as not being the best proof.)

Answer. I think they were dated in 1855 and 1856. I believe the value of them to have been eighty-eight dollars or less.

Interrogatory. What means had you of forming an opinion of the value of the Garretville accounts?

Answer. A general knowledge of the value of petty accounts, after having laid uncollected from one to two years, and information received from the assignors.

S. W. SMITH.

Exhibit "B," referred to the foregoing deposition of S. W. Smith, reads in the words and figures following, to wit:—

Solomon Davis and Joseph Barton, by their attorney, B. M. Cooley,
Bought of S. W. Smith, assignee of Davis & Barton:—

3	lawn hand'fs,	6	19
2	"	1*s*	25
1	doz. "		3 00
8	yds. l. lawn,	30	10 40
3½	doz. hand'fs,		
1	linen bosom,		37
1	"		33
4	"	20	80
4	"	1/8	1 87
1	doz. "		1 50
1	" "		3 00

28	yds. edg.,	10	2 80
18½	"	15	2 48
18	"	18	3 24
12	"	2*s*	3 00
9	"	30	2 70
2½	"	3*s*	94
14	"	4*s*	7 00
4	"	6*s*	3 00
5	worsted caps,	10*s*	6 25
1	"		1 12
1	hood,		75
1	"		2 00
1	pair drawers,		67
2	"	5*s*	1 25
1	doz. comforters,		1 50
9	comforters,	33	2 97
13	"	20	2 60
18½	yds. delain,	20	3 70
5	" pink,	10	50
16	" lawn,	10	1 60
2½	" "	20	50
13	" print,	10	1 30
9	" lawn,	10½	94
3	bonnets,	6*s*	2 25
3	"	28*s*	10 50
2	"	18*s*	4 50
2	"	32*s*	8 00
11	"	24*s*	33 00
2	"	20*s*	5 00
1	"		63
3	"	45	1 35
1	"	2*s* 6*d*	62
1	"		50
4	"	1*s* 6*d*	75
2	yds. lawn,		25
17	shawls,	3	51
5	"	46*s*	30 00
1	"		5 25
1	"		4 75
1	"		9 00
1	"		4 25
4	"	7	28 00
2	"	6 50	13 00
3	"	2 50	7 50
2	"	2 50	5 00
2	"	9*s*	2 25
2	scarfs,	4 50	9 00
1	"		3 50

2	spreads,	24*s*	6 00
2	muffler,	6*s*	1 50
1	satchel,	8*s*	1 00
1	"		88
1	"		84
1	"		69
2	capes,	12 00	24 00
1	"		1 75
2	"	17 00	34 00
2	"	6 75	13 50
2	"		10 00
1	"		9 00
1	"		6 50
2	"	3 75	7 50
1	"		9 00
1	skirt,		2 50
1	"		87
1	form,		4 00
1	spread,		1 13
2	yds. vesting,	10*s*	2 50
½		95	48
6	linen,	3*s* 6*d*	2 62
1	vest pattern,		50
1	"		1 25
2½	linen,		79
¾	"		56
4	lawn,	2*s* 6*d*	1 25
20	b. lawn,	2*s*	5 00
20	"	30	6 00
9	"	24	2 16
9½	jaconet,	42	64
18¼	"	30	5 12
12	linen muslin,	40	5 00
16	"	30	4 80
16	"	50	8 00
3	"	3*s*	1 12
2	"	50	1 00
16	book,	50	8 00
16	"	30	4 80
8	nansook,	3*s*	3 00
8½	"	2*s*	1 38
65	tarleton,	2*s*	16 12
16	"	3*s*	6 09
3¾	tull,	2*s* 6*d*	1 18
6	"	2*s*	1 50
3½	"	55	1 93
3	"	2*s*	75
6½	"	2*s*	1 56

7	tull,	1*s* 6*d*	1	31
4½	"	2*s*	1	12
9	"	18	1	62
18½	"	18	3	33
4	"	18		72
9	"	30	2	70
14	"	1*s*	1	75
6	"	2*s*	1	50
18	doz. tooluy,	1*s* 6*d*	1	50
8	yds. print,	10		80
42	yds. emb. muslin,	15	6	30
36	"	30	10	80
36	"	20	7	20
42	"	3*s*	10	25
2½	"	1*s*		31
12	"	55	6	60
12	"	4*s*	6	00
240¾	denoins,	10	24	08
55	red flannel,	26	14	30
26½	"	26	6	89
13½	"	24	3	24
17½	ging.,	30	5	25
29¾	yds. red flannel,	28	8	33
28½	"	2*s*	7	13
5⅛	"	36	1	84
2	"	28		56
37¼	"	28	10	43
32½	summer stuff,	16	5	20
71	cotton flannel,	10½	7	46
37	wigan,	1*s* 6*d*	6	94
26½	damask,	16½	4	37
6	bleached muslin,	14		84
23¾	"	6	13	71
62½	"	10	6	35
145	"	10½	15	23
275¾	"	7	19	30
39¾	"	7¼	2	98
89½	"	9	9	08
143¾	"	8	11	50
3	"	9½		28
135	brown cotton,	6¼	8	79
8	flannel,	30	2	40
30	prs. hose,	9	2	70
1	hord,			25
1	pr. mittens,			75
10	pr. boots,	16	1	60
1	"			10
2	"	20		40

3	armlets,	1*s* 4*d*	50
1	neck-tie,		09
1	box flowers,		4 75
$\frac{3}{4}$	doz. collars,	11*s*	85
$\frac{3}{4}$	"	10*s*	84
$\frac{5}{12}$	"	12*s*	63
$\frac{3}{4}$	"	10*s*	84
$\frac{1}{2}$	lb. sewing silk,	7 50	3 84
	working cottons,		2 00
4	doz. tapes,	35	1 40
6	pr. dous shuads,	9	54
500	em. silk,	$2\frac{1}{2}$	12 50
4	head-dresses,	9*s*	4 50
	white wax,		44
7	tassels,	16	1 12
6	"	9	54
$\frac{8}{12}$	doz. gloves,	48*s*	4 00
$\frac{10}{12}$	"	10	1 04
1	"		1 50
$\frac{9}{12}$	"	14	1 31
$\frac{9}{12}$	"	28*s*	2 63
4	"	2*s* 6*d*	1 25
10	"	3*s*	3 75
$\frac{9}{12}$	"	12 00	9 00
$2\frac{7}{12}$	"	9 00	23 25
$1\frac{11}{12}$	"	10 00	23 07
120	yds. print,	$5\frac{1}{2}$	6 10
50	"	$7\frac{1}{2}$	3 75
74	"	$8\frac{1}{2}$	6 29
84	"	9	7 96
$399\frac{1}{2}$	"	$9\frac{1}{2}$	37 74
405	"	10	40 50
95	yds. lawns,	$17\frac{1}{2}$	16 63
50	"	$18\frac{1}{2}$	9 25
242	"	20	48 40
20	"	1*s*	2 50
43	"	3*s*	15 38
$6\frac{1}{2}$	"	35	2 27
$17\frac{1}{2}$	"	48	8 75
2	robes	24*s*	6 00
15	yds. plaid,	$27\frac{1}{2}$	4 13
3	tulled p.	20	60
20	yds. delaine,	29	5 80
21	"	19	3 99
17	"	18	3 06
4	"	2*s*	84
9	yds. plaid,	20	1 80
69	"	19	13 11

99	yds. plaid,	27	26	93	
7	"	32	2	15	
1	dress pattern,		5	25	
56	yds. print,	22½	12	60	
69	yds. gingham,	18½	12	40	
50½	"	20	10	10	
41½	"	1	5	19	
275	"	10	27	50	
3½	yds. brilliants,	20		70	
17¾	yds. drillings,	10	1	78	
9	"	1*s*	1	13	
4	"		16	25	
148	yds. wool plaid,	30	44	40	
10½	"	2*s* 6*d*	3	28	
8	"	3*s*	3	00	
65	"	2*s*	16	50	
80	"	12	9	60	
26½	"	11½	3	05	
16	"	10	1	60	
46	yds. delaine,	35	16	10	
574	yds. cambric,	7	40	18	
24	pieces pap. do., 961 yds.	8½	76	88	
4	gross lacetts,	20		80	
⅛	lb. silk,	6*s*		25	
15½	lbs. knitting cotton,	42	6	51	
1¼	lb. coll'd thread,	40		50	
33	doz. cotton spore,	47	25	17	
9	"	1*s*	1	13	
21	p'cks pins,	60	12	60	
13	gro. hooks and eyes,	10*s*	16	25	
11	box. cords,	2*s*	2	75	
29	lbs. black thread, $\frac{1}{5}$ $\frac{5}{70}$ $\frac{3}{8}$ $\frac{4}{80}$ $\frac{2}{95}$ $\frac{3}{85}$ $\frac{8}{7}\frac{4}{8}$		24	89	
1	doz. combs,			58	
	$\frac{3\frac{1}{2}}{1.90}$ ivory combs, $\frac{1}{2}\frac{1}{3}\frac{1}{9}$, 25 per cent.		9	71	
¼	doz. rubber combs,	3 00		75	
4½	"	9*s*	5	06	
1	woman's belt,			57	
3½	doz. O. quality,	6*s*	2	62	
2	doz. tape,	35		70	
3	porte-monnaies,	3*s*	1	13	
1	box,			87	
1	gro. buckles,			50	
8	gro. buttons,	1*s*	1	00	
1	gro. coat buttons,			87	
⅔	"	28*s*	10	25	Cr. 15 75
¼	"	8*s*		25	
5½	"	1*s* 4*d*		84	Dr. 84

4	tooth brushes,	23	92	
3	doz. penholders,	8	24	
5	doz. envelopes,	6	30	
1 3/4	ream paper	24s	5 25	
1/2	"	20s	1 25	
3	p'ks cards,	10	30	
8	pks. gloves,	6s	6 00	
8	" suspenders,	2s	2 00	
1	ps. bonnet ribbon,		1 00	
1	yd. "	16	1 28	
4 1/2	ps. "	4 75	21 38	
1	"		3 71	
1	"		7 50	
2/3	"	7 00	4 66	
1 1/2	"	7 50	8 12	
1	"		4 50	
2/3	"	5 00	3 34	
4	"	2s 6d	1 25	
1 1/2	"	14	21	
1/2	"	1 35	68	
3	"	1 30	3 90	
2	"	1 20	2 40	
2	"	80	1 60	
3	"	6s	2 25	
9	"	4s	4 50	
1	"		37	
2	"	45	90	
2	"	40	80	
5	"	30	1 50	
3	"	28	84	
5	"	22	1 10	
2	"	20	40	
4 1/2	"	19	86	
5 1/2	"	15	83	
2	"	30	60	
3	"	16	48	
1	doz. silvered thread,		1 50	
1	bag,		40	
1	"		1 00	
1	"		1 25	
1/8	doz. bags,	7 50	37 50	Cr. 36 25
5	thimbles,	3s	1 88	
1	tooth brush,		7	
12	doz. hose,	9s	13 50	
19 1/4	"	17	19 88	
1	"		1 50	
8 7/12	"	11s	12 20	
5 1/2	"	10	7 81	

1 1/12 doz. hose,	14*s*	1	92
1 1/12 "	18*s*	3	38
1 1/12 "	24*s*	5	75
1 1/12 "		1	67
1/6 "	28*s*		59
1 "		2	25
1/2 silk,	10 25	5	25
3/4 "	9 50	7	12
3/4 "	16*s*	1	50
1/3 "	6*s*		25
1 3/4 "	24*s*	5	25
1 1/12 "	4 20	3	90
3/4 "	36*s*	3	37
5 "	13*s*	8	13
1 5/12 "	10*s*	1	77
1/12 "	8*s* 6*d*		89
2/3 "	24*s*	2	00
6 hair rolls,	4*s*	3	00
1 1/2 lb. bugles,	6*s*	1	12
1 " hair pins,	2*s* 6*d*		31
1/2 doz. boxes,	3*s*		19
3 prs. scissors,	2*s*		75
2 gro. hooks and eyes,	10*s*	2	50
1 doz. gloves,		1	00
1/12 "	6 00	5	00
1 7/12 "	12 00	19	00
1 1/6 "	9 00	12	00
4 prs. "	94	3	76
2 doz. tovling,	1*s* 6*d*		38
10 tassels,	10	2	00
7/12 doz. gloves,			25
7/12 "	9 00	5	25
1 1/12 "	3 00	1	75
1/12 "	1 60		80
1/12 "	28*s*	2	94
1/12 "	3 00	2	50
1/12 "	8*s*		84
4/12 "	20*s*		62
5/12 "	28*s*		88
1 1/12 "	16*s*		83
8/12 "	18*s*	2	06
1 2/12 "	6*s*	6	50
1 "		1	50
8/12 "	18*s*	1	50
2/12 doz. mitts,	7 50	1	25
1 pr. mitts,			50
4 1/2 yds. silk,	97 1/2	39	95
14 "	30*s* 3*d*	57	20

14 yds. silk,	65	9	10
14 "	65	9	10
13 "	8*s*	13	00
17 "	6*s*	12	75
11½ "	8*s*	1	50
6 "	6*s*	4	50
17½ yds. velvet,	32½	5	69
3 yds. brage,	45	1	37
3½ "	3*s*	1	31
43¼ "	4	1	90
5 "	2*s* 6*d*	1	56
16½ "	40	6	60
5¾ "	42½	22	20
10¾ "	3	3	17
23 yds. flannel,	5*s*	13	88
51½ yds. crinoline,	3 2	6	95
1 yd. bombazine,	6*s*		75
9¾ yds. alpaca,	3*s*	6	09
9½ yds. parramatta,	3*s*	3	56
4½ "	32½	1	26
19¼ "	30	5	78
11 "	4*s*	5	50
26½ "	2*s*	6	62
3½ "	35	1	21
6 yds. plaid,	57½	3	45
2¾ "	35		97
24¾ "	50	12	38
28¼ "	30	14	12
8 "	30	4	00
33 "	34	11	12
86 "	35	12	60
35½ yds. merino,	80	28	40
14¼ "	85	12	11
2 "	8*s*	2	00
11 "	95	10	45
9 "	7*s*	7	88
10 "	10*s*	12	50
9 yds. buff muslin,	11½	1	04
11 prs. suspenders,	1*s*	1	38
5 "	6		31
veils, $\frac{2}{2}$ $\frac{2}{4}$ $1\frac{1}{8}$ $3\frac{1}{2}$ $3\frac{1}{00}$		4	06
3 prs. gloves,	3*s*	1	12
¼ doz. hair brushes,	22*s*		69
1 "			37
6 braids,	15		90
4 riches,	10		40
22 doz. edgings,	2*s* 6*d*	6	88
1½ "	3*s*		56

5	doz. edgings,	4*s*	2	50	
12	"	6*s*	6	00	
7½	"	6*s*	5	62	
5	"	8*s*	5	00	
4½	"	10*s*	5	63	
3	"	12*s*	4	50	
¾	"	18*s*	1	69	
1	"		2	25	
1	"	3 37	3	37	
4	"	2*s*	1	00	
27½	Holland,	1*s*	3	44	
37	yds. wiggin,	8½	2	74	
35½	yds. padding,	15	5	33	
18	yds. lawn,	20	3	60	
24	yds. sleeve lining,	16	3	84	
9	yds. curtain muslin,	16	1	44	
17	"	13	2	21	
25	yds. check,	10	2	50	
12	"	1*s*	1	50	
1	"	9½		76	
3½	yds. drilling,	45	1	68	
25	yds. linen check,	16	4	00	
40	"	10	4	00	
130	yds. lace,	6	7	80	
39	yds. curtain stuff,	11½	4	49	
2½	yds. velvet,	30		70	
1	box flowers,	18*s*	2	25	
	Hats,	16*s*	2	00	
8	pairs of gloves,	6*s*	6	00	
8	pairs mittens,	8*s*	8	00	
1	pair gloves,	10*s*	1	25	
1	set furs,		4	87	
1	roal cord,	6*s*		75	
1	set cuffs, each	12*s* 6*d*	2	25	
400½	yds. flannel,	9¼	38	07	
278	"	10	27	80	
132½	"	10	13	25	
93¾	"	10½	9	87	
142	"	11½	16	33	
80	"	11½	9	20	
96¼	yds. ticking,	14	13	47	
31	"	10	3	10	
38	"	12	6	96	
37¾	"	13½	1	39	3 70 due.
44¼	"	12	4	85	
70	"	14	9	80	
33	"	10½	3	48	
46¾	"	16½	7	71	

41¾	yds. ticking,	11½	4	79	
25½	"	10	2	55	
4	yds. hickory,	10		40	
16	yds. checked,	12	1	92	
13	"	12	1	56	
36	"	10½	3	78	
51	"	20	10	20	
1	doz. doyles,	28*s*	3	50	
1 8/12	"	9*s*	1	88	
1¾	"	6*s*	1	31	
1½	"	10*s*	1	87	
2 8/12	"	8*s*	2	66	
3	table covers,	12*s*	4	50	
5	yds. huck,	15		75	
6	yds. lawn,	90	5	40	
4	yds. bleached cotton,	28	1	12	
10½	yds. ladies' cloth,	14	18	38	
32	yds. drilling,	8½	2	74	
152	yds. sheeting,	9¼	17	06	
41	"	1½	3	07	
55	yds. velvet,	32⅓	17	88	
37½	yds. merino,	27½	10	24	
51¾	yds. silk,	7*s*	45	23	
10	"	8	10	00	
6	"	12*s*	9	00	
12¾	"	65	8	29	
1½	"	16*s*	3	00	
12½	"	12*s*	18	75	
16	"	45	7	20	
16	"	4*s*	8	00	
1¼	"	23		29	
53	yds. fringe,	5*s*	33	12	
24½	"	4*s* 4*d*	13	26	
2¼	dozen fringe,	4*s*	9	00	
1 7/12	"	24	38	00	Cr. 33 25
3	yds. fringe,	11	3	75	
9½	"	6*s*	6	94	
13¾	"	4*s*	6	38	
7	"	16	1	12	
12	"	16*s*	24	00	
16½	"	3*s*	4	96	
23	"	4*s*	11	50	
16½	"	2*s*	4	12	
3½	"	18		63	
13½	"	1*s* 6*d*	2	52	
8	"	2*s*	2	00	
16½	"	2*s*	4	12	
1 5/12	dozen fringe,	32*s*	5	56	

3	yds. fringe,	15	45
9	"	3*s*	3 31
4¼	"	16	75
20³	"	1*s*	2 59
18	"	16	2 88
19	"	2*s* 6*d*	3 94
9	"	16	1 48
10	"	1*s*	1 25
2¼	"	20	45
8	"	2*s* 6*d*	2 50
5	"	45	2 25
3	"	5*s*	1 88
3½	"	5²⁵	8 37
4	"	32*s*	16 00
5	"	20	1 00
12	"	4*s*	6 00
1¼	"	10*s*	1 46
3	"	24*s*	9 00
1	piece fringe,		4 00
2	"	12*s*	3 00
1	"		1 75
1	"		88
2	"	6*s*	1 50
7	"	16	1 12
4	yds. fringe,	10*s*	5 00
5¼	"	2*s*	1 31
⅓	doz. fringe,	6*s*	25
1	piece fringe,		38
1	"		50
1	"		1 50
6	"	16	96
1½	"	6*s*	1 12
9½	yds. velvet ribbon,	6*s*	6 94
2	pieces velvet ribbon,	24*s*	6 00
2	"	4 00	8 00
14	doz. chenille,	2*s* 6*d*	4 38
10	"	6*s*	7 50
3	yds. bugle lace,	3*s*	1 12
15½	"	18	2 79
2½	yds. fringe,	16	38
4¾	"	10	48
2	gross D. buttons,	14*s*	3 50
½	"	20*s*	1 25
6	"	8*s*	6 00
1½	"	40	60
2	"	18*s*	4 50
1	"		09
1	"		60

½	gross D. buttons,	12*s*	75
8½	"	3	3 19
1	"		16
2½	"	3*s*	94
3½	"	4 00	14 00
15	doz. "	2*s* 6*d*	3 80
1	"		1 12
5½	"	7*s*	4 81
2	cloak tassels,	5*s*	1 25
6	"	6*s*	4 50
42	yds. ribbon,	20	8 40
36	"	2*s*	9 00
3½	"	18	64
2	"	2*s*	50
2	belts,	2*s*	50
¼	doz. "	7 00	1 75
⅙	"	6 00	1 00
⅙	"	3 00	50
7½	"	12	88
7	tassels,	2*s*	1 75
130	p. needles,	4*s*	4 30
8	doz. brand silk,	7*s*	7 00
3	ps. "	20	60
4	doz. linen bobbin,	15	60
4	"	1*s*	50
1 5/12	linen braid,	3*s*	66
1	gross buttons,		75
8½	doz. "	10	85
4	doz. lucetts,	2*s* 6*d*	1 25
3	"	6	19
	"		10
1	braid,		35
3	ps. elastic,	6	19
2	yds. cord,	2	16
1	scarf,		38
5	hdkfs.,	13	65
4	"	27	1 08
4	"	78	3 12
¾	sewing silk,	6 50	3 38
2	bale batts,	9 00	18 00
1	"		10 50
1	"		13 50
1	collar,		3 75
4	"	2*s* 6*d*	1 25
9	dimity bands,	1*s*	1 13
1	collar,		2 75
1	"		2 25
31	"	5½	1 72

1	collar,		50
1	"		65
2	"	6s	1 50
1	"		2 25
1	"		65
1	"		75
1	"		2 00
1	"		18
1	"	5	3 75
6	cravats,		1 75
1	"	8s	2 00
2	"	10s	6 25
5	bands,	6s	1 50
2	"		1 50
3½	yds. embroidery,	14s	6 12
4	"	12s	6 00
	dimity bands,		30
1	pr. sleeves,		1 50
1	"		50
1	"		38
1	"		2 50
12	pr. edg.,	27	3 24
5	"	6s	3 75
5½	"	2s	1 38
8	"	9s	72
3	pr. skates,	4s 6d	1 69
1½	yds. nankin,	10	15
2	locks,	1s	25
2 5/12	doz. knobs,	12s	3 63
5	"	3s	1 62
3	molasses gates,	3s	1 31
6	twine,	22 2	1 35
1	pr. shears,		62
5	files,	58	2 91
1¼	yds. silk,	7s	1 10
	black twist,		25
24½	yds. silk,	2s	6 12
33	"	45	14 85
1	ps. dimity,		40
11	yds. silk,	4s	5 50
22⅓	" lawn,	2s	5 69
16¼	" silk,	2s	4 06
1	parasol,		1 25
1 1/8	yds. velvet,	14s	1 96
16	" cambric,	30	4 80
33	" "	3s	12 00
4	" "	18	72
5¼	" "	1s	66

$8\frac{1}{2}$ dotted Swiss,	3*s*	3 09		
8 "	18	1 44		
$5\frac{1}{2}$ "	31	1 74		
13 brilliant,	30	3 90		
$3\frac{1}{4}$ skirting,	30	9 07	Cr. 8	10
$3\frac{1}{4}$ jaconet,	3*s*	1 13		
$5\frac{5}{8}$ "	18	1 02		
$8\frac{3}{4}$ "	35	3 04		
$3\frac{1}{2}$ "	30	1 12		
16 "	3*s*	6 00		
16 "	18	2 88		
1 bale btts.,		9 00		
			3585	92
Less 20 per cent.,			717	18
			2868	74
	2868	74		
Less as agreed,		13		
	2868	61		
Less errors in extension,		88 77		
	2779	84		
Sundry account at and about Garretsville, Otsego Co., New York, sold this 30th day of Oct., 1857 (amount in gross $238 21), for eighty-eight $\frac{77}{100}$ dollars,		88 77		
			2868	61

The Garretsville accounts assigned to Sol. Davis and Joseph Barton for eighty-eight $\frac{77}{100}$ dollars.

Received,

Janesville, Oct. 30, 1857, of Solomon Davis and Joseph Barton by B. M. Cooley, their attorney, the following notes in payment of the above invoiced account:—

Note signed Davis & Barton to the order of Sol. Davis, dated Aug. 18, 1857, and exchange,	525 00
Note signed Davis & Barton to the order of Sol. Davis, dated Aug. 27, 1857, int. and exchange,	527 91
Note signed Davis & Barton to Sallie M. Davis, dated Ap'l 7, 1856, and interest,	55 47
Note signed Davis & Barton to Charlotte Davis, dated Ap. 14, 1856, and int.,	77 56
Note signed.	
Note signed Davis & Barton to M. D. Cummings, dated M'ch 17, '57 and int.,	208 70

Note signed Davis & Barton to M. D. Cummings, dated Aug. 18, 1857, and int.,	319 30	
Note signed Davis & Barton to Sol. Davis, dated Ap'l 12, 1856, and int.,	243 76	
Note signed Davis & Barton to Sol. Davis, dated Ap'l 1, 1856, and int.,	222 12	
Note signed Davis & Barton to Sol. Davis, dated March 31, 1856, and int.,	388 79	
An endorsement of one hundred dollars as per receipt on note of D. & B. to Sol. Davis, dated Ap'l 14, 1856,	100 00	
An endorsement of two hundred dollars as per receipt on note of D. & B. to Joseph Barton, dated Jan'y 3, 1856,	200 00	
		2868 61

S. W. SMITH, Assignee of
DAVIS & BARTON.

Exhibit "C," referred to in the foregoing deposition of S. W. Smith, reads in the words and figures following, to wit:—

Know all men by these presents, that I, Joseph Barton, of the town of New Lisbon, county of Otsego, State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Benj. M. Cooley, of the city of Janesville, and county of Rock, and State of Wisconsin, my true and lawful attorney, for me and in my name, place and stead, to purchase all interest of Davis and Barton, or S. W. Smith, assignee of Davis and Barton's interest in all lands, and in all notes and accounts outstanding in Janesville, Garrattsville, and elsewhere, and to purchase the balance of goods now in the store and in possession of S. W. Smith, of Janesville, and all other business he may think proper and right to transact, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and conforming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal, this 29th day of Oct., 1857. JOSEPH BARTON. [SEAL.]

In presence of—SALLIE M. DAVIS.
SOLOMON DAVIS.

Exhibit "D," referred to in the foregoing deposition of S. W. Smith, reads in the words and figures following, to wit:—

Know all men by these presents, I Solomon Davis, of the town of New Lisbon, Otsego County, and State of New York, have made,

constituted, and appointed, and by these presents do make, constitute and appoint Benj. M. Cooley, of the city of Janesville, and county of Rock, and State of Wisconsin, my true and lawful attorney, for me and in my name, place, and stead, to purchase all the interest of Davis and Barton, or S. W. Smith, assignee of Davis and Barton's interest in all lands and in all notes and accounts outstanding in Janesville, Garrattsville, and elsewhere, and to purchase the balance of goods in the store now in the possession of S. W. Smith, of Janesville, and all other business he may think proper and right to transact, giving and granting unto my said attorney full power and authority to do and perform all and every act and anything whatsoever needful and necessary to be done in and about the premises, as fully to all intents and purposes as I might and could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done in the premises by virtue thereof.

In witness whereof I have hereunto set my hand and seal the 29th day of Oct., 1857. SOLOMON DAVIS. [SEAL.]

In presence of—S. M. DAVIS.
JOSEPH BARTON.

Exhibit "E," referred to in the foregoing deposition of S. W. Smith, reads in the words and figures following, to wit:—

This indenture, made the twenty-eighth day of September, in the year eighteen hundred and fifty-seven, between Dewitt C. Davis, and Darius A. Barton, copartners, under the name, style and firm of Davis & Barton, of the first part, and Shubal W. Smith, of the city of Janesville, Rock County, of the second part. Whereas, the said parties of the first part are justly indebted to sundry persons in sundry considerable sums of money, and being unable to pay the same in full, are desirous of making a fair and equitable distribution of their property and effects among their creditors. Now this indenture witnesseth, that the said parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, assign, transfer, and set over unto the said party of the second part, his heirs and assigns, all and singular the lands, tenements and hereditaments of the said parties of the first part, situate, lying and being in the State of Wisconsin, and all other lands and tenements and hereditaments of the said parties of the first part, wherever situate and being, and all the goods, chattels, wares, merchandise, bills, bonds, notes, book accounts, claims, demands, judgments, choses in action, evidence of debt, and property of every nature and description, excepting such as is exempt by law from execution and attachment in the State of Wisconsin, of which said

lands, tenements, hereditaments and goods, choses in action and other property aforesaid, a schedule is herewith annexed and marked "Schedule A," and also all books of account of the said parties of the first part, and all papers, documents, and vouchers relating to their business dealing or property, and also all other property, real and personal, of every name and description, wherever being or situate, of the said parties of the first part, whether contained in the said schedule marked Schedule "A," or not, excepting such, however, as is exempt by law from execution and attachment by the laws of the State of Wisconsin. To have and to hold the same, every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators and assigns, *in trust*, nevertheless, and to and for the following use, intents and purposes, that is to say, that the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, and all other the property and effects hereby assigned or intended so to be, and shall with all reasonable diligence sell and dispose of the same either at public or private sale, as in his judgment may appear best, and most for the interest of the parties concerned, and convert the same into money, and shall also collect all and singular the said debts, dues, bills, bonds, notes, accounts, choses in action, claims and demands, or so much thereof as may prove collectable, and thereupon execute, acknowledge and deliver good and sufficient deeds, bills of sale, releases, and all other instruments that may be necessary and proper to effect a sale and transfer of any and all the said property hereby assigned or intended so to be, and with and out of the proceeds of such sale and collections, the said party of the second part shall first pay and disburse all the reasonable expenses, costs, charges and commissions of making, executing and carrying into effect this assignment and the trusts thereby created, including *including* a compensation to the said party of the second part, for his services in executing the same, and shall also pay the rent and taxes, if any now due, and to grow due upon the premises at present occupied by the said parties of the first part, until the said property and effects hereby assigned shall be sold and disposed of, or as long as it may be necessary to retain and use the said premises for the storage or safe keeping of the same, and with and out of the residue or nett proceeds and avails of such sales and collections, the said party of the second part shall pay and discharge the debts of the said parties of the first part, in the order and manner following, that is to say:—

First. The said party of the second part shall pay and discharge in full the several and respective debts, bonds, notes, and sums of money due and to grow due from the said parties of the first part, or for which they are liable to the several firms, corporations, and banks, named and designated in the schedule hereto annexed, marked schedule "B," together with the interest due and to grow due thereon, and if said nett proceeds shall not be sufficient to pay and discharge

the said debts and liabilities mentioned and referred to in the said schedule marked schedule "B," in full, then the same shall be paid out of said proceeds ratably as far as the said proceeds will go in proportion to their respective amounts.

Secondly. With and out of the residue and remainder of the said nett proceeds, if any shall remain after the payment in full of the said debts and liabilities mentioned in said schedule marked "B," the said party of the second part shall pay and discharge all the other copartnership debts, demands, and liabilities, now existing, whether due or hereafter to become due against the said parties of the first part, provided such residue shall prove sufficient for that purpose, and if the same prove insufficient then the said party of the second part shall apply the said residue to the payment and liquidation of such debts share and share alike, according to their respective amounts, as far as such residue will extend for such purpose.

Thirdly. With and out of the remainder of said nett proceeds of any shall remain after paying off the partnership debts, the said party of the second part shall pay and discharge all the private and undividual debts of the said parties of the first part, or either of them, whether due or to grow due, provided the respective amounts of the undivided debts of each of said parties does not exceed his portion of the surplus that may remain after paying all such partnership debts, and if it should, then his interest in said surplus is to be divided pro rata among his individual creditors in proportion to their respective demands, it being understood that no part of said surplus which will belong to each of said individual parties of the first part respectively, after the payment of the copartnership debts, is to be made liable for the individual debts of the other of them. And for the better execution of these presents, and of the several trusts thereby created, the said parties hereby make, and constitute, and appoint, the said party of the second part, his executors and administrators, their and each of their true and lawful attorney irrevocable with full power and authority to do, transact, and perform, all acts, deeds, matters, and things, which may be necessary in the premises, as fully and completely as the said parties of the first part, or either of them, might or could do if these presents had not been executed, and attorneys one or more under him to make, nominate, and appoint, with full power of substitution and revocation, hereby ratifying, confirming all and whatever the said attorney and his substitutes shall lawfully do or cause to be done in the premises by virtue hereof.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

DE WITT C. DAVIS, [SEAL.]
DARIUS A. BARTON. [SEAL.]

Signed, sealed, and delivered in presence of,
J. C. SLOAN,
JOHN R. BENNETT.

State of Wisconsin, Rock County, ss.

On the twenty-eighth day of September, A. D. 1857, personally appeared before the undersigned, a notary public for said State, residing in Rock County, Dewitt C. Davis and Darius A. Barton, personally known to the undersigned to be the persons who executed the above instrument, and acknowledged the execution thereof respectively, and that the same was their free act and deed of each of them.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[L. S.] JOHN B. BENNETT,
Notary Public.

I hereby consent to act as trustee under the above assignment, and hereby covenant, promise and agree to fully and faithfully perform and execute the trusts and duties thereby created and reposed.

S. W. SMITH.

Dated September 28, 1857.

Schedule "B."

Referred to in the foregoing and annexed assignment.

Solomon Davis, certain promissory notes amounting to one thousand eight hundred dollars, or thereabouts.

Joseph Barton one promissory note, four hundred dollars, or thereabouts.

The Central Bank of Wisconsin two promissory notes given by Davis & Barton, and endorsed by Solomon Davis and Joseph Barton, of five hundred dollars, or thereabouts, each.

Naaman Moore promissory note made by Davis & Barton, and endorsed by Solomon Davis, of five hundred dollars, or thereabouts.

Bank of Cooperstown, Otsego County, New York, two promissory notes endorsed by Solomon Davis and Joseph Barton, of five hundred dollars, or thereabouts, each.

Moses D. Cummings two promissory notes endorsed by Solomon Davis, amounting to five hundred and fifteen dollars, or thereabouts.

Sally M. Davis promissory note endorsed by Solomon Davis, fifty dollars.

Charlotte Davis promissory note, seventy dollars.

John P. Hoyt & Company promissory note made by Davis & Barton, and endorsed by George E. Jones, one hundred and ninety-seven dollars, or thereabouts.

John R. Beale borrowed money, one hundred dollars, or thereabouts.

George E. Evans borrowed money, fifty dollars, or thereabouts.

Henry McKinney account, fifty dollars, or thereabouts

Charles E. Davison acceptance, one hundred dollars, or thereabouts.

Amasa Orlup borrowed money, twenty-five dollars.

A. H. Fisher for services as clerk, about forty dollors.

Elias J. Fenton, balance of account about fifteen dollars.

W. Hawes, attorney at law, partner of H. S. Conger, about thirty-five dollars.

Wm. Leona H. Davis borrowed money, one hundred and two dollars.

Solomon Davis' endorsements above mentioned, and all his endorsements for Davis & Barton.

Joseph Barton endorsements above mentioned, and all his endorsements for Davis & Barton.

Charles Holt, or Janesville Gazette Office, about twelve dollars.

Platt Eycleshimer, about fifteen dollars.

DEWITT C. DAVIS.
DARIUS A. BARTON.

Dated September 28, 1857.

Invoice of Goods taken by Davis & Barton, Sept., 1857.

10 4/12	doz. Coates' thread	47½	4 93
¼	lb. worsted	22*s*	69
6	doz. cotton tape	30	1 80
3	head dresses	12*s*	4 50
1	"	9*s*	1 12
3	pocket knives	6*s*	2 25
1	gro. puff combs	9*s*	1 13
10	bunches ounce pins	4*s*	40
⅓	box white ware	8*s*	33
4½	hundred emb'd silk	20*s*	11 25
5	prs. mitts	5*s*	3 12
4	"	4*s*	2 00
67	floss	2	1 34
2½	"	8*s*	2 50
½	doz. spools	3*s*	19
½	"	2*s* 6*d*	16
¾	doz. pr. scissors	24*s*	2 25
8	ps. dress shields	9	72
10½	yds. thread edging	6*s*	7 69
2	"	40	80
4⅞	"	2*s*	1 22
¾	"	4*s*	38
1¾	"	2*s*	44
9	"	27	2 03
5	"	9	45
1 0/2	doz. collars	14*s*	1 44
9	"	1*s* 6*d*	1 69
5	"	16	80
1	"	10*s*	1 25
7	"	9	63

1½	doz. collars	11*s*	2 06
1	"	10*s*	1 25
2	doz. wool shirts	9 00	18 00
1 7/12	"	7 50	4 38
2	"	8*s* 4*d*	1 08
6	doz. dress buttons	1*s* 6*d*	1 12
1	gro. dress buttons	14*s*	1 75
3	doz. dress buttons	20	60
11	"	1*s*	1 38
6	"	9	54
3 9/12	gro. dress buttons	8*s*	3 75
10½	doz. dress buttons	1*s* 4*d*	1 77
3	"	3*s*	1 12
1	"	2*s*	25
½	"	2*s* 6*d*	16
1 9/12	doz. dress buttons,	6	4
6½	"	1*s*	81
½	"	18	9
1 5/12	"	2*s* 6*d*	12
3	gro. "	4 00	12 00
9	doz. "	7*s*	7 18
3	cloak tassels,	5*s* 4*d*	2 00
½	"	9 00	4 59
3	boxes dress trimmings,	4 00	12 00
1	doz. spool cord,	12*s*	1 50
2	tooth-brushes,	7	14
1	money-bag,	10*s*	1 25
1	"	8*s*	1 00
5	silver thimbles,	3*s*	1 88
1	pr. puff combs,	8*s*	1 00
4	thimbles,	1	04
1 9/12	doz. tape needles,	8	14
24	yds. velvet ribbon,	6*s*	18 00
4	pr. dress-trimmings,	3 25	21 00
2	fancy velvet ribbons,	3 00	6 00
3	" "	4 00	12 00
10½	yds. "	2*s* 8*d*	3 49
3	ps. dress trimmings,	6 50	19 50
4	"	4 00	16 00
4	"	3 00	12 00
1	"	7 50	7 50
58	"	5*s*	37 50
1	"	8 75	8 75
1	"	4 00	4 00
6¼	trimmings,	32	2 00
7¾	"	4*s* 4*d*	4 20
7½	"	2*s* 6*d*	1 88
1 5/8	"	2*s*	33

1 ps. trimmings,			6 00
1½ doz. dress trimmings,		24*s*	4 50
2	"	12*s*	3 00
1 9/12	"	24*s*	3 00
1	"	9*s*	1 96
1	"	14*s*	1 78
2	"	24*s*	3 00
1	"	6*s*	4 00
1	"	24*s*	3 00
2	"	6*s*	4 00
15 yds.	"	7*s*	88
18	"	18*s*	2 25
14	"	8*s*	2 00
18	"	8*s*	1 44
22¼ bonnet ribbon,		2*s* 6*d*	12 44
34½	"	5*s*	21 41
25¾	"	3*s*	9 66
10	"	2*s* 6*d*	3 13
8½	"	1*s* 6*d*	1 52
6 pairs	"	4 75	24 50
2 yds.	"	3 75	7 50
7½	"	38	2 85
7¾	"	2*s* 8*d*	2 58
8¾	"	40	3 50
1½	"	2*s* 3*d*	1 46
⅞	"	40	35
1½	"	2*s*	38
8	"	1*s* 6*d*	1 50
33¾	"	20	6 65
10	"	2*s*	2 50
3¾	"	1*s* 6*d*	70
4 prs.	"	8*s*	4 00
1	"		1 30
1	"		1 00
1	"		85
1 velvet ribbon,			1 30
6½ yds.	"	13	77
7	"	11	77
1 pair	"	10*s*	1 25
1 "	"	6*s*	75
8 yds. taffeta		10	50
1 pair	"	10*s*	1 25
1	"	4*s*	50
11	"	6	66
1	"		55
8	"	50	4 00
3	"	6*s*	2 25
2	"	45	90

1	ps. taffeta,	65	65
6	"	22	1 33
6	"	30	1 89
8	"	18	1 48
2	"	28	56
1	"	55	55
1	"	33	33
1	"		88
1	yd. "	11	66
6	"	6	36
6	"	1*s*	13
1	"	6	9
1½	"	11	32
8	"	3½	14
4	"	6	30
5	"	5	08
1½	"	4	36
9	"	10	1 10
11	"	6	24
4	"	6½	65
10	"	6	36
6	"	4	40
10	"	2½	40
4	"	2½	10
1	"	3½	5
2	ps. "	30	60
3	"	22	66
4½	"	18	79
6½	"	22	1 43
4½	"	40	1 80
4¾	"	30	1 42
1	"	18	18
1	doz. crochet needles	3*s*	38
11	yds. braid	8	88
7	"	4	28
5 $\frac{2}{12}$	doz. handk'fs	10*s*	6 41
4	"	2*s* 8*d*	3 33
1	doz. linen bosoms	12*s*	1 30
1	"	24*s*	3 00
1 $\frac{7}{12}$	"	20*s*	3 94
½	"	3 75	1 88
1	"		4 50
6	silk handk'fs	6*s* 3*d*	4 69
2	"	4*s*	1 00
5	"	32½	1 63
7	cotton	1*s*	87
6 $\frac{9}{12}$	doz. worsted braid	3*s*	2 53

18	yds. inserting	18	3	24
9	"	30	2	70
9	"	10		90
6	"	4*s*	3	00
9	"	15	1	85
5½	"	3*s*	2	06
5½	"	6*s*	4	06
7½	"	15	1	13
7	"	2*s*	1	75
2	"	30		60
2¼	"	6*s*	1	69
6	"	4*s*	3	00
5¼	"	2*s*	1	31
9	"	1*s*	1	13
7	"	9		63
1½	"	15		22
2	"	30		60
2	"	18		36
2½	edging	10		25
1½	"	3*s*		56
2½	"	4	1	00
2	lbs. col'd silk	7 50	13	13
1¾	"	4*s*	1	00
⅛	black	6 50		81
2½	doz. linen handk'fs	3 00	7	50
1½	"	9*s*	2	06
1	"	6*s*		44
1	"	10*s*		31
1	"	12*s*	1	50
5	"	6		31
1	"	36*s*	4	50
5	"	15		75
4	doz. silk braids	9*s*	4	50
1½	"	60		50
3	"	4*s*	1	83
3	"	20		60
6	bunches braid	6		36
16½	doz. bobbin	15	2	48
2	" tapes	1*s*		32
21	" silk buttons	2*s* 6*d*	3	94
3½	"	3*s* 6*d*	1	53
1	"	9*s*	1	12
2½	lbs. cotton (skein)	45	1	03
44	papers pins	5½	2	42
7	" needles	10*s*	8	75
2¼	lbs. sewing thread	8*s*	2	25
1	gro. pearl buttons	10*s*	1	25
1	"	12*s*	1	50

24	gro. pearl buttons,	$6\frac{1}{4}$	1	50
8	"	8		64
6	"	3		18
$622\frac{3}{4}$	yd. cotton flannel	10	62	28
$464\frac{1}{2}$	"	$9\frac{1}{2}$	44	13
176	"	11	19	36
$272\frac{1}{2}$	"	$11\frac{1}{2}$	31	33
285	"	$10\frac{1}{2}$	29	91
32	yds. plaid	5*s*	20	00
27	"	5*s*	16	25
31	linsey	$16\frac{1}{2}$	5	12
45	canton flannel	$10\frac{1}{2}$	4	62
40	check	20	8	00
$17\frac{3}{4}$	salisbury	30	5	31
$42\frac{1}{2}$	canton	$10\frac{1}{2}$	4	66
$2894\frac{3}{4}$	sheeting	$8\frac{3}{8}$	203	63
$169\frac{1}{2}$	darmis	$10\frac{1}{2}$	17	90
$379\frac{3}{4}$	"	10	37	97
2	doz. napkins	6*s*	1	50
2	"	11*s*	2	75
2	"	9*s*	2	25
2	"	13*s*	3	25
1	"	28*s*	3	50
$3\frac{1}{2}$	"	8*s*	3	50
3	table spreads	12*s*	4	50
3	"	16*s*	6	00
2	"	40		80
6	ps. diaper	10*s*	7	50
2	yds. "	$9\frac{1}{2}$		19
$\frac{8}{4}\frac{}{2}$	"	13*s*		88
4	"	12*s*	6	00
15	yds. crash	15	2	25
$10\frac{1}{4}$	"	$10\frac{1}{4}$		95
2	"			
1	"	9*s* 6*d*		
3	diaper	1*s*		$37\frac{1}{2}$
$10\frac{1}{2}$	crash	15	1	57
24	striped sheeting	10	2	40
$260\frac{3}{4}$	"	$10\frac{1}{2}$	27	38
34	check	1*s*	4	25
$131\frac{3}{4}$	"	$10\frac{1}{2}$	13	74
29	curtain damask	16	4	94
$45\frac{1}{4}$	striped sheeting	12	5	44
$50\frac{1}{2}$	drilling	$8\frac{1}{2}$	4	29
24	"	$9\frac{1}{2}$	2	28
$167\frac{3}{4}$	red flannel	26	26	93
$164\frac{1}{3}$	"	28	34	06
$26\frac{1}{4}$	"	36	6	82

26¼	red flannel		36	9 54
22	"		24	5 28
24¾	"		34½	8 33
22¼	"		28	6 23
26½	yellow flannel		30	7 95
27	gray flannel		27½	7 43
5	"		30	1 50
25¾	white flannel		47½	12 62
32	"		27	8 64
31	"		5*s*	20 63
15	"		40	6 00
20¼	"		32½	6 38
34	striped sheeting		12	4 08
323¼	"		7¾	25 03
332¾	"		8	26 62
355¼	"		9½	33 75
162	"		9¼	14 99
104	"		7½	7 89
215¼	yds. sheeting		6½	13 98
470	bleached sheeting		6¼	27 38
204	"		7	14 28
174¾	"		8	13 98
204½	"		9	18 41
918	"		10½	96 39
68½	"		15½	10 62
37	"		14	5 18
126½	"		14½	19 34
34	"		13	4 08
98	"		9½	9 41
47¾	"		9¾	4 45
51½	"		7½	3 86
8½	"		7	70
10	"		10½	1 05
2¾	white linen,		70	1 92
11½	"		90	10 35
2	pairs blankets,	5 25		10 50
1	counterpane, each 10*s*, 16*s*, 18*s*,			5 50
1	piece velvet ribbon,		6*s*	75
8	"		46	3 68
5	"		60	3 00
3	"		55	1 65
4	"		43	1 72
2	"		85	1 70
1	"		90	90
7	"		67½	4 75
3	"		9*s*	3 37
8	yds. velvet ribbon,		1*s*	1 01
19	"	1*s* 4*d*		3 17

1 4/12	yds. velvet ribbon,	90	90
1/2	"	70	35
7 7/12	"	73	5 01
1 2/12	"	9s	1 31
10 1/4	"	7	72
5	"	10	50
15	"	14	2 10
1/4	"	8s	25
2	pieces "	55	1 10
1	"		60
1	dress fringe,		4 00
1 4/12	"	24s	4 00
25	yds. "	2s	6 25
10/12	ps. "	4 00	3 33
1	yd. "		15
3	"	5	15
1	"	10	10
1	"	20	23
4 3/4	"	1s	52
9 1/2	"	16s	1 56
27	"	4	1 08
5	"	20	1 00
16	"	4	64
1	"		12
3 1/2	"	5	18
1	"		8
16	"	10	1 60
5 1/2	moire antique,	2s	1 38
37	"	16	3 92
8	"	6d	50
36	"	10	3 60
30	"	6d	1 87
4	"	16	64
40	"	4	1 60
13	"	8	1 04
1 1/2	mufflers,	20s	3 33
1	doz. mufflers,	4 00	4 00
6	bales batts,	13 50	81 00
5	"	10 50	52 50
6 1/2	"	9 00	58 50
3	skirts,	8s	2 00
3	"	9s	4 50
1	"	22s	2 75
1	"	8s	1 00
2 1/2	bbls. whalebones,	55	1 36
2	scarft,	3s	75
19	lbs. wicking,	22	4 18
1	satin scarf,	14s	1 75

3	neck ties,	8*s* 4*d*	3 13
10	"	5	6 25
2	"	8*s*	2 00
2	"	5	1 25
1	"	9*s*	1 13
2	"	2*s*	50
11½	yds. wool de laine,	35	4 01
29	"	35	10 15
12	"	3*s*	4 50
46¼	"	35	16 19
45¼	twill,	3*s*	33 84
11½	wool de laine,	20	2 39
44	"	4*s*	22 00
40½	"	55	18 00
24	barege,	19	5 41
28½	"	1*s* 6*d*	1 74
1½	doz. pencils,	2*s* 6*d*	34
1	gro. (gt.) rim buttons,	12*s*	1 50
⅓	doz. porte-monnaies,	12 00	4 00
1	doz. bonnet wire,	8*s*	1 00
7¼	doz. buttons,	16	1 16
1	doz. rubber combs,	20*s*	2 50
⅓	doz. porte-monnaies,	4 00	1 33
1	bu. envelopes,	9	27
3 19/12	doz. stay binding,	6*s*	2 85
2	"	35	70
1	doz. buck buttons,		12 00
½	doz. undershirts,	7 50	3 75
½	"	6 00	3 00
6/12	"	12 00	5 00
1 1/12	doz. gloves,	9 00	17 25
1	doz. shawl pins,	6*s*	75
21	yds. edging,	3	63
33	"	1*s* 6*d*	6 19
70½	"	2	1 41
65½	"	8	5 24
15½	"	4	62
22	"	1½	33
48	"	2½	1 14
115	"	1	1 15
8½	"	6*s*	1 06
14¾	"	10	1 47
2	"	4	8
10½	"	6	65
5	"	3	15
7½	"	14	1 05
24	"	1½	36
58	yds. curtain muslin,	11	6 38

1450	yds. paper muslin,			8¼	119 62
½	doz. gloves,			6 00	3 00
2	doz. combs,	1 90	3 80		
1	"	1 70	1 70		
1	"	2 30	2 30		
1	"	2 50	2 50		
			25 per cent. 10 30		
			2 57		
			7 53		7 53
36	packs pins,			63	22 68
37	doz. col'd thread,			1*s*	4 63
3	gro. shoe soutts,			25	75
9/12	gro. stays,			6*s*	56
17½	gro. hooks and eyes,			10*s*	21 88
13	boxes col'd cord,			2*s*	3 25
136	yds. cape net,			6	8 16
30½	yds. canvass,			16	4 88
35	yds. padding,			15	5 25
22¼	yds. linen,			42½	9 56
16	"			42½	6 80
26¾	"			42½	11 37
15¼	"			31	4 73
6½	"			30	1 95
3	"			40	1 20
10	"			50	5 00
17	"			3*s*	6 38
19	"			60	11 40
20	Selecia			10	3 20
43	Holland			1*s*	5 37
1	p'r undersleeves			12*s*	1 50
1	"			4*s*	50
1	"			3*s*	38
1	set embroidery			20*s*	2 50
1	strip "				2 25
1	"				1 25
1	"			6*s*	1 50
2	"			14*s*	1 75
1	"			14*s*	4 81
2¾	"			12*s*	5 63
3¾	"			12	5 63
4	dimity bands			20	80
1	"			9	9
¼	doz. veils			18*s*	56
1	"				22
1	"				83
2	"			4*s*	1 00

1	doz. veils		1 50
1	"		2 75
7¾	y'ds crape	27	2 09
11	"	1*s* 6*d*	2 06
6	"	20	1 20
1	p's "	4 00	4 00
2	doz. edging	3*s*	75
24	y'ds edging	6	1 44
12	"	8	96
44	"	4	1 76
94	"	6	1 44
36	"	5	1 80
94	"	6	1 44
94	"	10	2 40
36	"	4	1 44
72	"	5	3 60
63	"	3	1 89
3	reams note paper	8*s*	3 00
½	doz. gloves	15 00	5 00
1¼	flowers	16*s*	2 50
¾	"	6 00	4 50
37	y'ds wigan	8½	3 09
9	fans	8*s*	2 00
1	"		40
3	"	4*s*	1 50
⅛	doz. hair brushes	4 25	71
¼	"	2 75	69
9	p. straw trimming	15	90
12	y'ds duck	16	1 92
14	" check	13½	1 89
35	" "	16	5 60
26	" "	16	4 16
31	" selecia	1*s* 6*d*	9 99
29	" drilling	9	2 61
78¾	" velvet	32½	25 60
1¾	lbs. knitting cotton	34	69
15½	" "	36	2 58
2¼	y'ds velvet	35	78
1	"	32½	33
26¾	furniture print	7½	2 00
3	"	10	30
12	"	16	1 92
26	"	7½	1 95
6½	"	8½	55
3	linen	40	1 20
1½	check,	22	33
43	"	10	4 30
8	wigan,	6½	51

381½	y'ds print	8½	30 71
224	"	5¼	11 75
52	"	5	2 60
16½	"	6½	8 53
208	"	7½	15 64
1	bonnet, each,		00 00
6	"	24*s*	18 00
2	"	4 00	8 00
4	shaker bonnets,	6*s*	3 00
2	"	18*s*	4 50
3	"	20*s*	7 50
3	"	3 50	10 50
8	"	2*s*	2 00
6	"	45	2 70
1	"	4 & 5*s*	1 13
3	"	2*s* 6*d*	94
5	"	1*s* 6*d*	94
1	"	24*s*	3 00
1	cord and tassel,	8*s*	1 00
1	fancy box,	6*s*	75
2	window shades,	4*s* 6*d*	56
5	y'ds c flannel,	10	70
1	barege pattern,		5 25
3	y'd barege,	30	90
7½	silk,	55	3 65
11	barege,	32½	3 58
40	twill,	2*s*	10 00
35½	barege,	32½	11 54
25	"	32½	8 06
14	boxes,	4*s*	7 00
9	brilliants,	1*s* 6*d*	1 69
52	"	30	15 60
49¾	"	30	14 92
1	" pattern,		3 50
61	"	30	18 30
1	"		3 50
26	"	30	18 30
40	"	15	6 00
34	"	10	3 40
18	"	14	2 52
92	Union plaid,	34	31 28
10¼	lawn,	2*s* 6*d*	3 31
1	robe pattern	18*s*	2 25
2	"	28*s*	7 00
6	y'ds lawn,	10½	63
12	"	1*s*	1 50
112	"	10	11 20
6	"	15	90

64	calico,	10	6 40
54½	plaid,	2*s* 6*d*	17 06
90	"	27½	24 75
1⅜	doz. dimity bands,	11*s*	90
½	"	14*s*	88
62¼	y'ds Union plaid,	40	24 90
12	"	40	4 80
51½	"	50	25 75
23	merino,	80	18 40
31½	Union plaid,	35	10 94
38½	"	34	13 09
3	Parametta,	35	1 05
22	"	34	7 48
15	"	3	5 63
28	"	40	11 20
36½	"	4*s*	18 25
4⅛	collars,	55	2 52
5	"	6*s*	3 75
1	"		1 00
2	"	14*s* 2*s*	1 00
11	"	2*s* 6*d*	3 19
3	"	65	1 95
2	"	18*s*	4 50
3	"	14*s*	5 25
2	"	18	36
1	"		1 00
1	" ea. 20*s*, $2.75, $3.75, $4.50 & $2,		15 50
7	" 10*s*, 1 @ 30c,		1 55
1	"		
2	capes,	3 75	7 50
3	"	9 00	27 00
2	"	6 50	13 00
5	"	12 00	60 00
1	"		16 00
1	"		6 75
1	"		1 75
1	"		10 00
25¾	yds. ticking,	14	35 49
38	"	9¼	3 51
16	"	10⅓	1 68
46¾	"	10	4 67
48¼	"	11	5 31
121½	"	1*s*	15 19
47¼	"	13½	6 38
4	"	9	36
32¾	"	9⅓	3 11
48½	"	16⅔	8 00

1	doz. cord and tassels,	ea. 16*s*, 24*s*	5 00
$\frac{9}{12}$	"		1 50
$\frac{3}{12}$	"		3 00
$1\frac{2}{12}$	belts,		1 09
$\frac{10}{12}$	"	12*s*	1 25
$\frac{4}{12}$	"	6*s*	19
24	prs. hose,	10	2 40
$\frac{2}{12}$	doz. "	20*s*	41
$\frac{8}{12}$	doz. "	6 00	4 00
11	prs. "	2*s*	2 75
1	doz. "	24*s*	3 00
1	" "	6 00	6 00
1	" "	16*s*	2 00
$11\frac{1}{2}$	" "	4 50	4 13
$\frac{6}{12}$	" "	4 25	2 12
1	" "		3 00
$\frac{7}{12}$	" silk,	10 50	6 12
$\frac{9}{12}$	" "	9 50	7 13
$\frac{4}{12}$	" "	6*s*	19
$\frac{2}{12}$	" "	8*s*	17
$\frac{10}{12}$	" "	10*s*	1 00
$1\frac{3}{12}$	" "	11*s*	1 72
$\frac{4}{12}$	" "	14*s*	58
$2\frac{9}{12}$	" gloves,	6*s*	2 06
$4\frac{1}{12}$	" "	34*s*	12 25
$2\frac{4}{12}$	" "	28*s*	7 88
$2\frac{5}{12}$	" "	10*s*	3 00
1	" "		9 00
$1\frac{4}{12}$	" "	12*s*	2 00
12	prs. "	3*s*	4 50
1	dozen gauntlets,		6 00
$6\frac{1}{2}$	yds. jean,	20	1 30
$8\frac{1}{4}$	curtain damask	6*s*	6 19
$280\frac{1}{4}$	cambric	$7\frac{1}{2}$	21 02
$246\frac{3}{4}$	"	$6\frac{1}{2}$	16 03
$222\frac{3}{4}$	"	6	13 36
14	doz. hoops	12*s*	21 00
$\frac{5}{12}$	"	3 75	1 88
$\frac{10}{12}$	suspenders	2*s* 4*d*	2 42
$\frac{11}{12}$	"	18*s*	2 06
$1\frac{4}{12}$	"	12*s*	1 87
$\frac{3}{12}$	"	5 00	1 25
$\frac{7}{12}$	"	8*s*	58
5	lbs. linen thread	70	3 50
4	"	80	3 20
4	"	85	3 40
6	"	95	5 60
7	"	8*s*	7 00

16 lbs.	linen thread	7*s*	14 00
2	"	5*s*	1 25
6	"	6*s*	4 50
3	"	8*s*	3 00
2	"	7*s*	1 75
2	under shirts	12*s*	3 00
36	yds. moreen	2*s*	9 00
24	parametta	4*s*	12 00
1	bombazine		60
3	alpaca	2*s*	75
12	"	5*s*	7 50
27¾	parametta	30	8 34
11½	"	32½	3 74
69	skirt lining	13½	9 32
10	plaid	27½	2 75
42	"	27½	11 55
29¼	"	5*s*	18 29
49	Persian tull	20	9 00
28	"	11	3 08
13	twill	2*s*	3 25
28	"	1*s*	3 50
2	emb'd patterns	3 25	6 50
7	yds. wool de laine	3*s*	2 63
32	"	1*s*	4 00
27	gingham	16½	4 46
5	"	10	50
32	"	1*s*	4 00
85	"	10	8 50
42	"	10	4 20
53	"	1*s*	6 63
41½	"	10	4 15
78½	"	20	15 70
13	chambr'd	17½	2 28
8	drilling		80
16	chambr'd	9	1 44
36	gingham	1*s*	4 50
5	"	20	1 00
4	"	1*s*	50
29	"	1*s*	3 63
9	chambr'd	17½	1 68
7	calico	10	70
1	scarf		2 00
1	"		4 50
3	"	6*s*	2 25
1	"		3 00
1	"		4 50
1	shawl		7 50
2	"	7 00	14 00

3	table spreads	24s	9 00
2	shawls	6 50	13 00
4	"	3 00	12 00
1	"		2 50
1	"		3 50
1	"		2 00
6	"	6 00	36 00
1	"		3 75
1	"		15 00
1	"		4 00
2	"	3 25	6 50
2	"	4 25	8 50
1	"		6 00
1	"		4 75
3	"	3 25	9 75
2	"	6 50	13 00
3	"	6 50	19 50
2	"	3 25	6 50
1	"		4 25
1	"		9 00
1	"		10 50
1	"		7 75
1	"		20 00
1	each 7 00, 5 50, 7 00,		19 50
2	"	5 25	10 50
1	doz. stools,		36 00
	gas fixtures,		16 00
	stove and pipe,		6 00
1	mirror,		5 00
2	trunks, each 12s and 14s,		6 50
2	mattresses,	3 50	7 00
2	bedsteads,	20s	5 00
4	chairs,	16s	8 00
1	table,	16s	2 00
10	yds. swan's down,	20	2 00
	"	50	5 00
3	prs. cuffs,	12s	4 50
8	"	7s	2 63
2	capes,	4 00	8 00
2	capes and cuffs,	6 00	12 00
2	victorines,	3 50	7 00
1	"		6 00
2	fur capes, each 4 50 and 7 50,		24 00
1	"		12 00
1	sett scales,	12s	1 50
1	mirror,	10s	1 25
1	stand,	12s	1 50
12	yds. calico,	10	1 20

1	desk,		12 00
7	yds. cambric,	8	56
15	" calico,	10	1 50
1	" form,		3 50
1	" drawing and frame,		18 00
1	" table spread,	11*s*	1 38
498½	" calico,	10*s*	49 85
248	"	8½	13 64
2477	"	10	24 77
161¾	"	10	16 18
163¾	"	9½	15 55
19	yds. delaine,	20	3 80
9¾	"	18	1 76
1358	"	20	271 60
190¾	"	1*s* 6*d*	35 76
141	"	17½	24 68
27	"	16	4 32
14	"	33	4 62
194¾	yds. French print,	22½	43 81
41	yds. debege,	9½	3 89
55	yds. ducal plaid,	19	10 45
11¾	yds. silk fringe,	16*s*	23 50
3½	"	10*s*	4 25
3	yds. edging,	3*s*	1 13
10¼	yds. bugle trimming,	16	1 64
13	yds. silk fringe,	4*s*	7 50
18	"	6*s*	9 00
16	yds. edging,	18	2 88
16½	edging,	31	4 62
22	"	30	11 00
6½	"	2*s*	1 63
5	bugle trimming,	10	50
4	fringe,	20	80
18	"	4	9 00
1	merino,		95
4½	fringe,	8	36
1¼	silk,	1 30	1 62
6	doz. knitting needles,	3	18
10	boxes hair pins,	3	30
30	bunches,	4	1 20
5	shawls,	20*s*	12 50
8	"	22*s*	20 00
5	"	24*s*	15 00
2	"	4 00	8 00
5	umbrellas,	3*s*	1 88
1	"	5*s*	62
1	"	7*s*	88

1	satchel,	8*s*	1 00
3	"	5*s* 4*d*	2 00
2	"	6*s* 4*d*	1 59
1	doz. mufflers,	12*s*	1 50
11	hose,	9*s*	12 13
10 1/3	"	12*s*	15 50
6 5/12	"	10*s*	8 75
5 8/12	"	11*s*	7 80
6/12	"	10*s*	63
2	"	24	6 00
1	"	9	1 12
1 8/12	"	16*s*	3 33
2 10/12	"	18*s*	6 38
13 10/12	"	12*s*	20 75
1	"		3 25
1 1/3	"	16*s*	20 75
7/12	"	3 37	1 92
2 1/3	doz. ladies' kid gloves,	9 00	21 00
7/12	"	3 00	1 75
2 11/12	"	10 00	19 16
10/12	"	3 00	2 50
1	"		12 00
2 7/12	"	10 00	25 82
7/12	doz. hose,	20*s*	1 44
2	"	10*s*	2 50
4 5/12	"	13*s*	3 95
9/12	"	24*s*	2 25
11/12	"	8*s* 6*d*	93
3 1/2	"	9*s*	3 94
3 4/12	"	12*s*	4 88
6	p's fringe mittens,	6*s*	4 50
5 10/12	doz. hose	10*s*	7 50
6/12	"	8*s*	42
4 5/12	"	12*s*	6 63
1 1/12	doz. worsted boots,	12*s*	1 92
10/12	"	16*s*	1 63
1	buck gloves,		3 50
1	doz. cloth gloves,		5 00
1	kid,		9 50
1 1/2	Lisle,	20*s*	2 62
10/12	"	14*s*	1 44
1 1/2	"	9*s*	1 69
2	Cashmere,	18*s*	4 50
1	child's boots,	20*s*	2 50
1	p'rs mittens,	18*s*	2 25
1/3	"	8*s*	33
1	"	12*s*	1 50
1/3	hose,	9*s*	37

1	hood,	6*s*	75
2	rigolettes,	12*s*	3 00
3	"	5*s*	1 88
6	"	9*s*	6 75
5	"	8*s*	5 00
6	"	1*s* 4*d*	1 00
¼	doz. hoods,	7 50	1 87
1	"	24*s*	3 00
¼	"	9 00	2 25
1	worsted cape,	9*s*	1 13
5	"	10*s*	6 25
½	doz. mufflers,	9*s*	56
3 1⁄8	woollen yarn,	10*s*	4 84
4¼	"	90	3 82
1	"		75
⅛	doz. undershirts,	15 00	2 50
½	"	8 00	4 00
½	"	7 50	3 75
1 1⁄2	" wadding,	2*s*	42
2	ream paper,	14*s*	3 50
1¾	"	10*s*	2 31
3½	y'ds velvet,	4*s*	1 75
95	doz. thread,	47½	45 23
9½	" buttons,	2*s* 4*d*	2 78
10½	"	8	84
1 1⁄2	gro. penholders,	75	31
1	box letter envelope,		1 00
1	porte-monnaie,	6*s*	75
⅛	doz. "	5 50	92
⅛	" "	7 50	1 25
½	" toothbrushes,	2 75	1 38
4 1⁄2	coat buttons,	8	38
1	gro. buckles,	4*s*	50
1	doz. cotton	3*s*	38
1 1⁄2	" combs,	24*s*	2 50
2	" stay binding,	3*s*	75
2	" "	2*s*	50
1 1⁄2	" gauntlets,	8 50	2 12
12	" cuffed gloves,	3*s*	4 50
1	" "		3 00
1 1⁄2	" gauntlets,	11 00	8 25
1 1⁄2	gro. dress buttons,	40	33
1 1⁄2	"	60	50
½	doz. dress buttons,	1*s*	6
6	"	3	18
6	"	6	36
4½	"	8*s*	4 50
½	"	2*s*	13

4	doz.	dress buttons,	70	2 80
4		"	1*s*	50
$4\frac{9}{12}$		linen buttons,	3*s*	1 78
$\frac{8}{12}$		"	40	26
$\frac{6}{12}$		"	1*s*	31
$\frac{11}{12}$		"	3*s*	31
$\frac{9}{12}$		"	8*s*	75
$\frac{10}{12}$		combs	9*s* 6*d*	1 02
$\frac{4}{12}$		"	10*s*	31
$1\frac{2}{12}$		"	6*s*	88
$1\frac{1}{2}$		"	9*s*	1 69
$\frac{9}{12}$		"	11*s*	1 03
$\frac{11}{12}$		"	14*s*	1 62
$\frac{7}{12}$		"	16*s*	1 08
$\frac{6}{12}$		"	12*s*	75
$11\frac{3}{4}$	yds.	merino	7*s*	10 31
12		"	80	9 60
17		"	85	14 45
31		"	8*s*	31 00
$10\frac{1}{2}$		"	10*s*	13 13
$14\frac{1}{4}$		"	7*s*	12 47
$16\frac{1}{4}$		"	7*s*	14 22
18		"	95	17 10
38	yds.	Union plaid,	4*s*	19 00
$15\frac{1}{2}$		"	40	6 29
$37\frac{3}{4}$		"	36	13 56
$36\frac{1}{2}$		"	4*s*	18 62
$39\frac{1}{4}$	yds.	silk,	12*s*	58 38
$59\frac{1}{4}$		"	8*s*	59 25
43		"	65	27 29
$13\frac{1}{3}$		"	12*s*	20 25
$32\frac{1}{2}$		"	6*s*	24 38
$16\frac{1}{4}$		"	80	13 00
42		"	$97\frac{1}{2}$	40 85
12		"	10*s*	15 00
$4\frac{1}{4}$		"	85	3 61
$7\frac{3}{4}$		"	7*s*	6 81
$2\frac{1}{2}$		"	12*s*	3 75
$1\frac{3}{4}$		"	16*s*	3 50
40		"	1 $36\frac{1}{4}$	64 50
$26\frac{1}{4}$		"	12*s*	39 37
12	yds.	French print,	$17\frac{1}{2}$	2 10
14	yds.	calico,	10	1 40
$71\frac{1}{4}$		"	$9\frac{1}{2}$	6 77
4	yds.	Victoria lawn,	30	1 20
$1\frac{3}{4}$		"	21	36
20		"	3*s*	7 50
11		"	4*s*	9 00

16	yds. book lawn,	30	4 80
16	"	50	8 00
18	yds. nansook,	3*s*	6 75
6	"	2*s*	1 50
1 0/12	doz. handkerchiefs,	12*s*	1 25
1 9/12	"	12*s*	1 25
2	"	6*s*	1 50
1	"	1 30	1 30
4 1/4	yds. dimity,	40	1 70
35 1/4	yds. Florence silks,	2*s*	8 44
15 1/2	"	45	6 95
1 2/12	doz. hdkfs,	4 50	75
15	yds. bonnet silk,	4*s*	7 50
22	yds. lusse,	2*s*	5 50
4	yds. silk,	3*s*	1 50
2 1/4	"	2*s*	63
1 1/8	yds. velvet,	14*s*	1 97
	black twist,	6*s*	84
6	yds. cape,	2*s*	1 50
6	"	30	1 80
7 1/2	yds. net,	2*s*	1 88
8	"	20	60
3 3/4	"	2*s*	94
4	"	1*s* 6*d*	75
2	"	2*s*	50
7	yds. cape,	55	1 10
14	yds. plaid cambric,	2*s*	3 50
16	"	18	2 88
16	"	30	4 80
12	"	1*s*	1 50
32	"	3*s*	12 00
16	yds. jaconet,	1*s* 6*d*	3 00
4	"	3*s*	1 50
16	"	28	4 48
8	"	1*s* 6*d*	1 50
16	yds. jaconet cambric,	42	6 72
16	"	35	5 60
14	yds. brilliants,	2*s*	3 50
16	"	1*s* 6*d*	3 00
5	yds. dotted Swiss,	2*s* 6*d*	1 56
10	"	1*s* 6*d*	1 88
8	"	3*s*	3 00
6	yds. Berlin cord,	30	1 80
13	yds. brilliant,	30	3 90
20	yds. bishops' lawn,	30	6 00
32	yds. Swiss,	30	9 60
8	"	40	3 20
2 1/2	"	3*s*	94

20	yds. Victoria,	1*s* 6*d*	3 75
2½	"	4*s*	1 25
20	"	2*s*	5 00
20	"	45	9 00
6	"	24	1 44
5	yds. dress trimming,	1*s* 4*d*	94
23	"	5	1 15
28	"	4	1 12
5½	"	2*s*	1 38
1	yd. farmers' satin,	6*s*	75
3¼	yds. black cassimere,	1 35	4 39
16¼	yds. ladies' cloth,	14*s*	28 44
3	vest patterns,	10*s*	3 75
1	"	4*s*	50
2¼	yds. linen,	2*s*	56
1	"	2*s* 6*d*	31
6	"	40	2 40
2⅛	"	4*s*	1 06
3	"	3*s*	1 13
3	prs. skates,	5*s* 6*d*	2 06
1	yd. nankeen,		09
3	molasses gaits,	3*s* 6*d*	1 31
1	pr. shears,	5*s*	62
25	door knobs,	1*s*	3 13
5	"	3*s*	1 87
1⅔	doz. files,	10 50	3 50
14½	yds. silk,	12*s*	21 75
1	parasol,	12*s*	1 50
4	yds. curtain muslin,	1*s*	50
24	"	15	3 60
24	"	20	4 80
12	"	55	7 80
6	"	4*s*	3 00
48	"	30	14 40
42	"	2*s*	10 25
65	yds. tarleton,	2*s*	16 25
7	yds. cap lace,	20	1 40
8	"	2*s*	2 00
12	"	1*s*	1 50
12	"	16	1 92
11	"	1*s* 6*d*	2 06
			6595 37
			6595 37
1	show case,		12 00
1	"		7 00
			6614 37

1 piece fancy silk, 12½, 12s	18 75
	6633 12

A mortgage memo. on Messrs. Cayer and Harns' hands for foreclosure, or 160 acres of land, in Chippeway County.

Also, one lot in Waterloo, Iowa,	150 00
Also, one lot in Omoho City,	50 00

Exhibits marked "F," referred to in the foregoing deposition of S. W. Smith, read in the words and figures following, to wit :—

No. 1. $70 00 Garrattsville, April 14, 1856.

Three days from date we jointly and severally promise to pay Charlotte Davis, or bearer, seventy dollars, for value received.

DAVIS & BARTON.

Endorsed on the back: Rec'd from S. W. Smith, assignee of Davis & Barton, principal and interest, $70 00—7 56=$77 56.

B. McCOOLEY,
Att'y for Sol. Davis and Joseph Barton.

No. 2. $200. Garretsville, M'ch 17, 1857.

Thirty days after date we promise to pay to the order of Solomon Davis, to M. D. Cummings or bearer two hundred dollars, value received with use. DAVIS & BARTON.

Endorsement on the back thereof "Solomon Davis." Rec'd from S. W. Smith, assignee of Davis & Barton, for principal and interest $200 00, 8 70=$208 70. B. M. COOLY, Att'y for SOL. DAVIS.

No. 3. $315. Garrettsville, Aug. 18, 1857.

Ten days after, for value received, we promise to pay M. D. Cummings or order three hundred and fifteen dollars, value received with use. DAVIS & BARTON.

Endorsement on the back thereof "Solomon Davis." Rec'd Oct. 30, 1856, of S. W. Smith, assignee for Davis & Barton, for principal and interest, $315 00, 4 30=$319 30.

B. M. COOLEY, Att'y for
SOL. DAVIS.

No. 4. $220. Garrettsville, April 12, 1856.

Three days from date we promise to pay Solomon Davis or bearer two hundred and twenty dollars, for value received with interest.

DAVIS & BARTON.

Endorsement thereon: Rec'd of S. W. Smith, assignee of Davis & Barton, $220 00, 23 76=243 76. Oct. 31, '57.

B. M. COOLEY, Att'y for
SOL. DAVIS.

No. 5. $350. Garrettsville, M'ch 31, '56.

One year from date we promise to pay to Solomon Davis or order three hundred and fifty dollars, for value received with use.

DAVIS & BARTON.

Endorsement thereon: Rec'd of S. W. Smith, assignee of Davis & Barton, 350 00, 38 79=$388 79.

No. 6. $100. Garretsville, April 14, 1856.

One day from date we jointly and severally promise to pay S. Davis or bearer one hundred dollars, value rec'd.

DAVIS & BARTON.

Endorsement thereon: Oct. 30, '57, rec'd on the within note one hundred dollars of S. W. Smith, assignee of Davis & Barton.

S. W. SMITH, Assignee.

Rec'd of Nov. 4, 1857. Rec'd the am't due on the within note.

SOL. DAVIS, by
B. M. COOLEY, his Att'y.

No. 7. $50. Garrettsville, April 7, 1856.

Three days from date we jointly and severally promise to pay Sallie M. Davis or bearer fifty dollars, for value received.

DAVIS & BARTON.

I hereby guarantee the collection of the within note.

SOLOMON DAVIS.

Rec'd from S. W. Smith, assignee of Davis & Barton, for principal and int., $50 00, 5 47=$55 47.

B. M. COOLEY, Att'y for
SOL. DAVIS.

No. 8. $500 00. Janesville, Wis., June 27, 1857.

Ninety days from date we promise to pay to the order of Solomon Davis at the Bank of Cooperstown, five hundred dollars, value received. DAVIS & BARTON.

(Bank of Cooperstown. Paid by Solomon Davis and Joseph Barton, October 20, 1857.)

Endorsement on the back thereof "Solomon Davis, Joseph Barton." Rec'd from S. W. Smith, assignee of Davis & Barton, $500 00, int. 2 91, ex. 25 00=$527 91. B. M. COOLEY, Att'y for
SOLOMON DAVIS & JOSEPH BARTON.

No. 9. $500.

Ninety days after date we promise to pay to the order of Solomon Davis at the Bank of Cooperstown, five hundred dollars, value received. DAVIS & BARTON.

Garrettsville, Aug. 18, '57.

(Bank of Cooperstown. Paid by Solomon Davis and Joseph Barton, Oct. 20, 1857.)

Endorsement on the back "Solomon Davis, Joseph Barton." Rec'd from S. W. Smith, assignee of Davis & Barton, principal, $500 00, ex. 25 00=$525. B. M. COOLEY, Att'y for SOL. DAVIS & JOSEPH BARTON.

No. 10. $200. Garrettsville, Ap'l 1st, 1858.

Three days from date we promise to pay Solomon Davis or bearer two hundred dollars, value received. DAVIS & BARTON.

Endorsement on the back thereof: "Rec'd of S. W. Smith, assignee of Davis & Barton, for payment of within note, principal, 200, int. 22 12=$222 12 B. M. COOLEY, Att'y for SOL. DAVIS.

No. 11. Janesville, Wis., Oct. 30, 1857.

Received of S. W. Smith, assignee of Davis & Barton, two hundred dollars, which amount is endorsed on a certain note signed by Davis & Barton for four hundred dollars, and dated Jan'y 3, 1856, and due in one year from date, which note was preferred by Davis & Barton in their assignment to S. W. Smith on the 28th Sept.

B. M. COOLEY, Att'y for JOSEPH BARTON.

Exhibit "G" referred to in the foregoing deposition of S. W. Smith, and reads in the words and figures following, to wit:—

$750. Garrettsville, Aug. 25, 1855.

One year after date, for value received, we promise to pay to Solomon Davis or bearer seven hundred and fifty dollars with use.

DAVIS & BARTON.

Endorsement thereon: "Received on the within note, August 25, 1856, fifty-two dollars and fifty cents, it being the interest for one year. Nov. 5, 1857. Rec'd of S. W. Smith, assignee, the amount due on the within note. SOL. DAVIS, by R. M. COOLEY, his Att'y.

The said plaintiff also offered in evidence the deposition of De Witt C. Davis, to the admission of which the said defendant, by his said counsel, objected on the ground that the same was incompetent and improper to be submitted to the jury as evidence, which objection the said judge overruled and admitted the same to be read to the jury, to which decision the said defendant, by his said counsel, then and there excepted.

Deposition of De Witt C. Davis.

Circuit Court of the United States for the Seventh Circuit and District of Northern Illinois.

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES.

District of Northern New York.

Joseph Barton, of the county of Otsego, and State of New York, being duly sworn, deposes and says, that he is one of the plaintiffs in the above entitled cause; that he is advised by his counsel, and verily believes that the testimony of De Witt C. Davis is material and necessary for the plaintiffs in the prosecution of such cause, and that the said De Witt C. Davis lives at Cooperstown, in the State of New York, more than one hundred miles from the city of Chicago, where the court at which this deponent expects the said cause will be tried, is appointed by law to be held; and this deponent further says, that, as he is informed and believes, Edmund G. Stiles, the above named defendant, resides at Chicago, in the State of Illinois, about six hundred and fifty miles distant from Cooperstown, the place where the examination of the said De Witt C. Davis, witness, is expected to be taken; and that, as he is informed and believes, Messrs. Smith & Dewey, the attorneys of the said Edmund G. Stiles, resides also at Chicago, about six hundred and fifty miles from Cooperstown as aforesaid.

JOSEPH BARTON.

Sworn to and subscribed before me, this 25th day of April, A. D. 1859.

L. C. TURNER,
County Judge of Otsego County.

Circuit Court of the United States for the 7th Circuit and District of Northern Illinois.

SOLOMON DAVIS and JOSEPH BARTON
vs.
EDMUND G. STILES.

Let De Witt C. Davis, the witness named in the above affidavit, be examined *de bene esse* before me accordingly at my chambers, in Cooperstown, N. Y., on the 26th day of April, 1859, at 8 o'clock in the forenoon.

L. C. TURNER,
County Judge of Otsego County.

Be it remembered, that on the twenty-sixth day of April, A. D. 1859, at Cooperstown, Otsego Co., New York, application was made to me, the judge of the Otsego County Court, upon the affidavit of Joseph Barton, stating that he was one of the plaintiffs in a suit then depending in the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois, wherein Edmund G. Stiles

was defendant; that the testimony of De Witt C. Davis was material and necessary for the plaintiffs in the prosecution of such suit, and that he, the said De Witt C. Davis, lived at Cooperstown, in the State of New York, more than one hundred miles from Chicago, where the court at which he, the said deponent, expected the said cause would be tried was appointed by law to be held; that Edmund G. Stiles, the above named defendant, resides at Chicago, in the State of Illinois, about six hundred and fifty miles from Cooperstown aforesaid, and that Smith & Dewey, his attorneys, also reside at Chicago, about six hundred and fifty miles from Cooperstown aforesaid; and the said Joseph Barton requested me that the said De Witt C. Davis might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said De Witt C. Davis should be examined *de bene esse* before me, at my chambers, in Cooperstown. The said Joseph Barton appearing before me, at my said chambers, on the 26th day of April, I have thereupon proceeded with the said examination.

And the said De Witt C. Davis being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:—

I am twenty-five years of age, reside at Cooperstown, Otsego County, State of New York, and at this time in the employment of G. W. Evart, as a clerk in his store. I do not know the defendant in this suit, but am the son of Solomon Davis, one of the plaintiffs, and have known Joseph Barton, the other plaintiff, about eight years. I resided on and previous to the 28th day of October, A. D. 1857, at Janesville, Wisconsin, and was engaged in the mercantile business in Janesville. I was one of the firm of "Davis & Barton," in Janesville, and the name of my partner was Darius A. Barton. The said firm of Davis & Barton had been doing business in Janesville prior to Oct. 28th, 1857, about eighteen months. The said firm of "Davis & Barton" was dissolved about the 28th of September, A. D. 1857, and said dissolution was occasioned by the insolvency of the said firm, and by a general assignment by said firm for the benefit of its creditors. That Shubel W. Smith took possession of the assets and effects of the said firm as assignee under said assignment immediately after the execution of the said assignment, and still remains in possession of the assets and effects of said firm that are not yet disposed of. That the said assignee sold at retail the property assigned about the period of four weeks after the assignment, and then sold and delivered what remained on hand to the plaintiffs in this suit. That the goods sold to the plaintiffs consisted of silks, dress goods, flannels, sheetings, shirtings, shawls, capes, white goods, embroideries, dress trimmings, gloves, hosiery, and the usual variety of goods retailed in dry good stores. The goods thus sold and delivered to the plaintiffs were purchased by me in New York city, and I have been engaged in the dry goods business about nine years, and the cash value of the goods so sold and

delivered to the plaintiffs at Janesville, and at the time sold and delivered, was about twenty-eight hundred dollars. That the purchase and sale of the said goods was consummated with the said pl'ffs by Benjamin M. Cooley, their agent, and the goods were delivered to their said agent. After the sale of said goods they were boxed up in the store, being in all twelve boxes, four bales of batting, and one trunk; they were marked, I think, diamond H (H), and the address Ilion, Herkimer County, New York, and all were shipped excepting three bales of batting, I think, which the plaintiff's agent retained and sold at Janesville. The plaintiff's agent (Cooley) delivered the said boxes, bale; and trunk of goods to Scoville & Curtis, the agents of the Union Dispatch Company at Janesville aforesaid, on Saturday, the 31st day of October, 1857. I think I was present and witnessed the sale and delivery of the goods by the said assignee to the said agent of the plaintiffs. I saw the packing and boxing of the goods, and the delivery of the same to the Union Dispatch Company by the agent of the said plaintiffs.

DE WITT C. DAVIS.

And I do certify that the proceeding deposition was reduced to writing by me, and signed by the said De Witt C. Davis, in my presence, and that I am not of counsel nor attorney for either of the parties to the said suit, nor am I interested in the event thereof.

L. C. TURNER,
County Judge of Otsego Co., N. York.

Endorsed: Opened for pl'ff's att'ys May 5, 1859.
WM. H. BRADLEY, Cl'k.

Cross-interrogatories propounded to the said Dewitt C. Davis pursuant to notice and dedimus issued in that behalf, and taken before L. C. Turner, commissioner appointed for that purpose, on the 24th day of May, A. D. 1859, said witness having been first duly sworn, testified and deposed as follows:—

First cross-interrogatory. Are you one of the assignees and one of the debtors against whom the attachments were issued, and by whom defendant was garnisheed?

Answer to first cross-interrogatory. I am not one of the assignees, and am not aware of any attachments being issued against me by whom defendant was garnisheed.

Second cross-interrogatory. Did you not make the bargain yourself for the transportation of the goods in question by the defendant?

Answer to second cross-interrogatory. I did not.

Third cross-interrogatory. Did you not deliver them to defendant's agent, at Janesville?

Answer to third cross-interrogatory. I did not.

Fourth cross-interrogatory. Did you not leave Janesville, permanently, the same day or the day after the goods were delivered?

Answer to fourth cross-interrogatory. I did not.

Fifth cross-interrogatory. What day did you leave Janesville?

Answer to fifth cross-interrogatory. I think it was on the 3d day of Nov., 1857.

Sixth cross-interrogatory. Where have you been residing since?

Answer to sixth cross-interrogatory. In Otsego County, in the State of New York.

Seventh cross-interrogatory. Were you not in Chicago at the time defendant was garnisheed on your way east?

Answer to seventh cross-interrogatory. I was not to my knowledge.

Lastly, do you not know any other matter or thing touching the matters for which this action is defended, that may tend to the benefit or advantage of the said defendant? If yea, declare the same fully and at large as if you had been particularly interrogated thereto.

Answer to last cross-interrogatory. I do not.

DE WITT C. DAVIS.

I, Levi C. Turner, of Cooperstown, in the County of Otsego, and State of New York, a commissioner duly appointed to take the deposition of the said Dewitt C. Davis, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination to the said Dewitt C. Davis, as a witness in the said suit between the said Joseph Barton and Solomon Davis, plaintiffs, and the said Edmund G. Stiles, defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said Joseph Barton and Solomon Davis, plaintiffs, and the Edmund G. Stiles, defendant, so far as he should be interrogated concerning the same, and that said deposition was taken at my office, in the village of Cooperstown, in the county of Otsego, and State of New York, on the 24th day of May, A. D. 1859, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon, the same was signed and sworn to by the said deponent, Dewitt C. Davis, before me, at the place and on the day and year last aforesaid.

L. C. TURNER, Commissioner.

Endorsed: Opened and filed May 31, 1859.

WM. H. BRADLEY, Clerk.

The said plaintiffs also introduced John S. Parker, as a witness, who testified that he had lived in Janesville six years, selling dry goods. Knew Davis & Barton, who did business there. Helped take an inventory at the sale they made to Mr. Cooley one year ago last fall; that he was present at the store at Cooley's request. That it was B. M. Cooley who was buying the goods; that he wanted him, the said Parker, to help him take the invoice on his part as he was buying of the assignee (an invoice was here shown). That he did not

know what became of the goods; that they invoiced them at New York prices; that they were in good condition; that he did not remember the exact amount; and that he thought eighty cents on the dollar was a fair value—a very good trade for the buyers.

The said defendant, to maintain the issue on his part, introduced—

William L. Greenleaf, who having been duly sworn, testified that he was deputy clerk of the Circuit Court of Cook County, and had the custody of the records of said court; he testified that he had with him the records and papers of two attachment suits commenced in that court against De Witt C. Davis and Darius A. Barton, and the papers, copies of which hereto attached marked "A," "B," "C," "D," and "E," were introduced in evidence, and by agreement of counsel used the same as if the whole record were in court and read in the cause. (The plaintiffs objected to the introduction of any suits pending or commenced in another court, to which they were neither parties nor privies, and of which they had no notice, but the court permitted them to be introduced to show the circumstances and history of the case.)

Exhibit "A," above referred to.

Cook County Circuit Court.

ANDREW M. CAMERON, JUSTIN A. EDWARDS, WILLIAM R. GILBERT, and ROBERT M. BOYD, vs. DE WITT C. DAVIS and DARIUS A. BARTON. } November Term, 1857.

Allegations and interrogatories to be propounded to the garnishees who have been summoned herein.

The plaintiffs allege that the garnishees summoned in this suit had at the time when the garnishee process was served upon them in this cause in their possession a large quantity of goods and merchandise belonging to the said defendants, in boxes marked diamond "H."

Interrogatory first. Had you in your possession, or under your control, at the time when the garnishee process was served upon you in this cause, any boxes or cases of goods marked diamond "H?" If yea, how many boxes or cases were there?

Interrogatory second. Where were said goods shipped from, how billed and marked, and were directed to, when were they shipped?

SMITH & DAVIS, Att'y for Pl'ffs.

Endorsed: Filed Nov. 21, 1857.

WM. L. CHURCH, Cl'k.

Exhibit "B."

Cook County Circuit Court.

ANDREW M. CAMERON et al.
vs.
DE WITT C. DAVIS et al.

E. G. Stiles, who has been summoned as garnishee in the above entitled cause, for answer to the allegations and interrogatories filed by the plaintiff herein, saith, that on the 3d day of November, A. D. 1857, this deponent received, as one of the proprietors of the Union Dispatch Company, twelve boxes of goods, one trunk, bale weighing according to the bill for Janesville 3870 lbs., and marked [see original] (diamond H) Illion, New York. They were received at Chicago from the Chicago, St. Paul, and Fond du Lac Railroad, and consigned to us by our agent at Janesville, Wisconsin, where they were shipped; that said boxes, trunks, and bale were to be forwarded to said Illion, and were, at the time of the service of garnishee process upon me, and still are, in my possession; I do not know to whom the goods belong, but they are claimed to be the property of one Davis, but whether he is defendant in this suit deponent saith not; there are no names of owners upon the same, and therefore I cannot answer as to whom they belong.

E. G. STILES.

Subscribed and sworn to before me this day of March, A. D. 1858. WM. L. CHURCH, Cl'k.

Endorsed: Filed March 22, 1858.

WM. L. CHURCH, Cl'k.

Exhibit "C."

State of Illinois, Cook County, ss.

The people of the State of Illinois to the sheriff of said county, greeting: Whereas Ezekiel S. Smith, agent of Andrew M. Cameron, Justin A. Edwards, William R. Gilbert, and Robert M. Boyd, plaintiffs, hath complained on oath to William L. Church, clerk of the Circuit Court of Cook County, that Dewitt C. Davis and Darius A. Barton, defendants, are justly indebted to the said plaintiffs in the sum of two thousand seventy dollars and ninety-eight cents; and oath having also been made that the said defendants reside out of this State, so that the ordinary process of law cannot be served upon them, but have property and effects within this State liable to attachment, and the said plaintiffs having given bond and security according to the act in such cases made and provided, we therefore command you that you attach so much of the estate, real and personal, of the said defendants to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint, and such estate so attached in your hands to se-

cure or so to provide that the same may be liable to further proceedings thereupon, according to law, at a term of the Circuit Court to be holden at Chicago, within and for the county of Cook, on the 3 Monday of November inst., so as to compel the said defendants to appear and answer the complaint of the said plaintiffs, and that you also summon the Union Despatch Co. *Company*, goods and property marked diamond H, [see original], and shipped from Janesville, as garnishee, to be and appear before the said court on the 3 Monday of November inst., then and there to answer what may be objected against it, when and where you shall make known to the said court how you have executed this writ, and have you then and there this writ.

Witness, William L. Church, clerk of our said court, and the seal [L. S.] thereof, at Chicago, this third day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

W. L. CHURCH, Clerk.

Endorsed: No property found in my county whereon to levy; this writ served by reading to Edmund G. Stiles, agent of the Union Despatch Company, as garnishee, the 3d day of Nov., A. D. 1857.

1 service 50
1 rule 5
1 ret. 10
65

JOHN L. Wilson, Sh'ff.
By SETH TAYLOR,
Deputy.

Fees paid by Smith and Dewey, pl'ff's attorney.

Filed, November 17, 1857. WM. L. CHURCH, Cl'k.

Exhibit "D."

By virtue of the within writ of execution, No. 13,159, and one other issued from the same court, No. 13,161, in favor of Amos R. Eno, Jonathan W. Roberts, Emerson Rhodes, and Edward King, I did, on the 17th day of November, 1858, levy upon a lot shawls, scarfs, brown sheetings, bleached do., cotton flannels, prints, ginghams, lawns, de laines, merinos, cashmeres, silks, dress goods, velvets, hoisery, gloves, linen and cotton thread, cambrics, spool thread, pins, hooks and eyes, hair pins, cotton balls, bales, batts, furs, artificial vestings, insertions, linings, silk, knitting yarns, buttons, combs, ticking, demins, comforters, flannels, wool and worsted goods, collars, capes, mantillas, lace curtains, ribbons, tailor's trimmings, 1 trunk, bedding, and furniture. And on the first day of December, 1858, between the hours of nine in the morning, and the setting of the sun of the same day, at No. 181 South Water Street, in Chicago, in Cook County (the time and place of sale having been duly advertised according to law), I did sell at public vendue, to the highest and best bidder at said sale, the property levied upon as aforesaid, for the sum of twelve hundred ninety-nine $\frac{92}{100}$ dollars, $1299 92
and after deducting my fees and an execution, 27 14

advance storage lease and expense sale and property, 145 67
I have paid the balance into court, to abide the order thereof. 1127 11

1299 92

JOHN L. WILSON, late Sh'ff,
By SETH TAYLOR, Deputy.

State of Illinois, County of Cook, ss.

The people of the State of Illinois, to the sheriff of said county, greeting:—

We command you, that of the goods and chattels, to wit, 12 boxes of goods, one trunk, one bale weighing 3870 lbs., and marked [see original] (diamond H), Illion New York, now in hands of Union Despatch Company, garnishees of Dewitt C. Davis and Darius A. Barton, defendants in your county, you cause to be made the sum of twenty-one hundred sixty-six dollars and ninety-five cents, which Edward M. Cameron, Justin A. Edwards, William R. Gilbert, and Robert M. Boyd, plaintiffs, lately in the Circuit Court of Cook County, at a term thereof begun and held at Chicago, in said county, on the first Monday of March last past, recovered against the said defendants, and which, by the said court were adjudged to the said plaintiff for their damages, and also, the further sum of eighteen dollars and eighty cents, which were adjudged to the said plaintiffs for their costs and charges in that behalf expended, whereof said defendants are convicted, as appears to us of record. And have you these moneys ready to render to the said plaintiffs for their damages and costs aforesaid, and make return of this writ with an endorsement hereon, in what manner you shall have executed the same, in ninety days from the date hereof.

Witness William L. Church, clerk of our said court, and the seal thereof, at Chicago, in said county, this fourth day of November, A. D. 1838.

[L. S.] WM. L. CHURCH, Clerk.

Endorsed: Chicago, Dec. 2, 1858, of Wm. L. Church, clerk, seven hundred and sixty-two and $\frac{83}{100}$ dollars, in full for pro rata share of proceeds of sale of property made by virtue of the within ex. on an ex. in number 13,162, together with the costs of court, amounting to $18 80. Andreas M. Cumming, Justin A. Edwards, William R. Gilbart, and Robt. M. Boyd, per above.

State of Illinois, County of Cook, ss.

I, William L. Church, clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of answer of garnishee, interrogatories to garnishees, att'ch, writ, execution and sheriff certif. in a certain cause then pending in said court, on the com. law side thereof,

wherein Andrew M. Cameron et al. plaintiffs, and De Witt C. Davis et al. defendants.

In witness whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this twenty-third day of June, A. D. 1859.

[L. S.] WM. L. CHURCH, Clerk.

John Bates being sworn for the defendant, testified that he was custodian for the sheriff of Cook County in the fall of A. D. 1857; that he received the goods in question from the defendant, and kept possession of them until the sale on execution; that none of the goods in the boxes or trunk consisted of second-hand bedclothing, and was marked D. C. D. and De Witt C. Davis; that he recollected packages of goods marked H [see original], coming into his possession; that he did not know when; that he took them by order of deputy sheriff Taylor; that he took them to the store, and, together with the plaintiffs in those suits, inventoried and had them sold; that he did not examine them particularly; that he saw them opened; that he was requested to notice any marks of parties; that there were cards of parties (business cards of De Witt C. Davis and Darius A. Barton shown witness) in the different boxes, these cards, a large lot of them, put up in small boxes contained in a large box which contained sheets, sleeping-room goods, comfortables, &c., marked D. C. D.; that several gentlemen were there to examine; that he did not remember who had charge of sale; that he thought Farrington was one. Upon cross-examination, the said Bates testified that he had an order from Mr. Smith (of the firm of Smith & Dewey) to go to Pickering's warehouse; that he found the goods there, in the third loft; that he told Pickering he wanted the goods; that Pickering had a bill of ninety dollars for the goods; that he submitted the matter to the said Smith; that the charges were reduced fifteen or twenty dollars; that he found the goods there marked as he had stated in his direct examination; that there were ten or fifteen packages of them—three dray loads; that Pickering or his clerk let him in; that he took the goods away afterwards, and that he did not know but he had an order from Mr. Smith, or perhaps Mr. Farrington was with him.

Seth L. Taylor was also produced and sworn as a witness on the part of the defendant, who testified that he was deputy sheriff of Cook County; sold the goods in question upon the execution marked "E," and another against the same defendants in favor of Amos R. Eno et al., and delivered the proceeds of said sales to the plaintiffs in said executions. Upon cross-examination, the said Seth L. Taylor testified that he thought that he levied the said executions on the 17th day of November, A. D. 1858; that he found the goods in South Water Street; that they were first in the hands of the Union Despatch Company; that he moved them to a warehouse; that Stiles gave him an order, and that upon his order he went and took the goods mentioned in said writ.

Chauncey T. Bowen was also produced and sworn as a witness on the part of the defendant, who testified that he lived in Chicago; that he was a dealer in dry goods; had been for ten years engaged in the sale of dry goods; that Mr. Farrington went with him to South Water Street to look at some dry goods some time last fall; that the goods lay loose on the counter; that they were in the sheriff's sale room; that Mr. Bates and Mr. Farrington were there; that the condition of the goods had no appearance of being damaged; that he valued the goods; that they would be worth fifty cents on the dollar if bought as goods are ordinarily bought in New York. Upon cross-examination, the said Chauncey T. Bowen testified that the goods were an ordinary retail stock of goods; that their value depends on styles; as styles change, the value of a stock of goods of that description would ordinarily deteriorate after the lapse of time. Upon the direct examination being resumed, he testified, on being shown the bill of goods, that he saw the names of some of the goods which he saw at the store; that there were certain styles that would not be worth as much in 1858 as in 1857; that perhaps one-eighth of the goods were ribbons and trimmings, which would deteriorate; that they would have been worth, in ordinary seasons, fifteen to twenty per cent. more a year before.

Francis P. Van Wyck was also produced and sworn as a witness on the part of defendant, who testified that he was a merchant, a dealer in dry goods, on Lake Street in the city of Chicago; in the fall of 1858 he looked over a stock of goods which were being sold by Mr. Farrington; that he went at the request of Mr. Bates to examine the goods, who notified him of the sale; that he did not know as he could form a positive opinion of the value of the goods in 1857 by seeing them in 1858; would be but little difference if kept in boxes; that their value in November, 1857, in the condition he found, would be rather under than over sixty per cent.; that he did not see the ribbons, &c., in boxes; that he saw that part of the stock consisting of domestics and staples.

Fitch B. Stacey was also produced and sworn as a witness on the part of the defendant, who testified that he was formerly a merchant in Chicago; that he went with Wm. Bowen and Farrington to see said stock of goods; that their condition was about like that of an ordinary stock in a country store; that he could form an opinion as to their value in 1857; that they valued the goods at forty cents on the dollar, supposing them to have been bought at a fair price.

And after the evidence was closed, the counsel of the defendant requested the court to instruct the jury:—

1. That a common carrier could not be guilty of a conversion by a qualified refusal when he claimed no interest in the goods himself, and he had shown reasonable grounds of dispute as to the title.

2. That a qualified refusal by the defendant after he was garnisheed, he only claiming to hold them to await the decision of title

when there was reasonable ground of dispute as to the title was no conversion.

The court instructed the jury generally upon the law of the case, and left the question as to the right of property to them, and refused under the circumstances to give the instructions requested by the counsel of the defendant; but as to that part of the case instructed the jury substantially as follows:—

1. That the jury were to determine, from the evidence, whether there had been a conversion; as a general rule, if the right of property was in the plaintiffs, a demand on the defendant and a refusal by him to deliver up property in his possession, were circumstances from which the jury might infer a conversion—open, of course, to explanation.

2. That, if the plaintiffs were the owners of the goods, and they were delivered by the plaintiffs, or their agent, to the defendants, and received by him or his agents to be transported for the plaintiffs to their residence in New York, then the defendant was liable under and according to the terms of contract; and if he did not so transport them or comply with his contract, the plaintiffs had the right to call on him to deliver up to them the goods, and if upon such demand he refused, it was for the jury to say whether it constituted, under the circumstances of this cause, a conversion.

3. That, in the contingency contemplated by the last preceding instruction, if the defendant declined to return or surrender the goods to the plaintiffs, it was to be considered at his own risk or peril.

4. That any proceedings in the State Court to which the plaintiffs were not parties and of which they had no notice, did not bind them or their property.

5. The court left it to the jury to say whether there was any connivance or collusion between the attaching creditors and the defendant, and if there was, then the defendant could not rely upon those proceedings as an excuse for not delivering up the goods.

And the court declined to charge the jury that the fact of the goods being garnisheed as the property of third persons, of itself under the circumstances of this case, constituted a bar to the action, but said to the jury, they might consider that fact, as a circumstance, to be weighed by them, in order to determine whether or not there was a conversion.

To the refusal of the court to give the instructions asked and to the giving of the above instructions by the court, the defendant then and there excepted.

Exception allowed June, 1859.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed June 18, 1859.

WM. H. BRADLEY, Cl'k.

And afterwards, to wit, on the twenty-seventh day of June, A. D. 1859, the said defendant, by Smith, Dewey & Kellogg, his attorneys, sued out of the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, a writ of error in this behalf, which reads in the words and figures following, to wit:—

United States of America, Northern District of Illinois, ss.

The United States of America, to the judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you between Solomon Davis and Joseph Barton, and against Edmund G. Stiles, a manifest error hath happened, to the great damage of the said Edmund G. Stiles, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf. You are hereby commanded that if judgment therein be given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the 83d year.

WM. H. BRADLEY, Clerk.

Endorsed: Filed June 27th, 1839.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the 27th day of June, A. D. 1859, the following bond in appeal was filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and reads as following, to wit:—

Supreme Court of the United States.

EDMUND G. STILES
vs.
SOLOMON DAVIS and JOSEPH BARTON. } In Error.

Know all men by these presents, that we, Edmund G. Stiles, Soranus L. Barrett and Henry W. King, are held and firmly bound unto the above named Solomon Davis and Joseph Barton in the sum of five thousand dollars, to be paid to the said Solomon Davis and Joseph Barton, their executors or administrators, to which payment

well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals, and dated on the twenty-fifth day of June, A. D. 1859. Whereas the above named Edmund G. Stiles hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois. Now, therefore, the condition of this obligation is such that if the above named Edmund G. Stiles shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HENRY W. KING, [SEAL.]
S. L. BARRETT, [SEAL.]
E. G. STILES. [SEAL.]

Sealed and delivered in the presence of—

Security approved. THOMAS DRUMMOND.

Endorsed: Filed June 27, 1859.

WM. H. BRADLEY, Clerk.

And afterwards, to wit, on the 26th day of November, A. D. 1859, the following citation was filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and reads in the words and figures following, to wit:—

United States of America, Northern District of Illinois, ss.

To Solomon Davis and Joseph Barton, greeting:—

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States of the Northern District of Illinois, for the correction of alleged errors of said Circuit Court, wherein Edmund G. Stiles is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the Justices of the Circuit of the United States for the Northern District of Illinois, this 5th day of July, 1859, and of our independence the 84th year. THOMAS DRUMMOND.

Endorsed:

Northern District of New York.

I certify that I personally served the within citation on Solomon Davis and Joseph Barton, respectively, at Garrettsville, in said district, on the 22d day of July, 1859, by reading the within to each

of the within named defendants, and at the same time delivering to each a true copy of the within, made by me.

SIMEON B. JEWETT, Marshal.
By SCHUYLER HUBBARD, Dept.

Filed November 26, 1859.

WM. H. BRADLEY, Clk.

Northern District of Illinois.

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings had in the cause wherein Solomon Davis and Joseph Barton were plaintiffs, and Edmund G. Stiles was defendant, as the same appears from the records of said cause in said court, and now remaining on file therein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Chicago, this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth year.

[SEAL.] WM. H. BRADLEY, Clk.

Filed 7th December, 1859.

Supreme Court

OF THE UNITED STATES.

SOLOMON DAVIS and JOSEPH BARTON,
Defendants in error.

ads.

EDMUND G. STILES,
Plaintiff in error.

Points for Def't's in error.

No. 116.

Solomon Davis and Joseph Barton, of Otsego county, N. Y. plaintiffs in the court below, sued Edmund G. Stiles, defendant, of Chicago, in the Circuit Court of the United States, for the Northern district of Illinois, in an action of Trover, for personal property of the alleged value of $5,000. (See Narr., pp. 5, 6.)

Defendant plead the general issue, and three special pleas. Each of the special pleas upon demurrer were held to be insufficient, and were withdrawn by defendant. (See pages 7 to 13.)

On the trial before his Honor, Thomas Drummond, District Judge, plaintiffs (defendants in error) proved that the goods were delivered to defendant as a common carrier, doing business "as the Union Dispatch Company," for transportation from Janesville, Wisconsin, to Illion, N. Y., for plaintiffs as the owners thereof. That defend-

ant gave plaintiffs a written agreement as such common carrier, of which the following is a copy:

"*Union Dispatch Company, E. G. Stiles & Co., proprie-*
"*tors, General Western Office,* 13 *Dearborn street, Chicago,*
"*Ill.*

"JANESVILLE, Wis., Nov. 3, 1857.

"Received in store from Benjamin Cooley, Att'y, for Sol-
"omon Davis and Joseph Barton, 12 Boxes, 1 Trunk, and
"1 Bale Dry Goods, to be forwarded to Illion, Herkimer
"county, N. Y., at $2.15-100 per 100 lbs. Subject to the
"order of Solomon Davis and Joseph Barton, upon the
"surrender of this receipt and payment of charges. Loss
"by the elements at owners' risk.

"SCHOFIELD & CURTIS,
"*Agents.*

Plaintiffs also proved a demand upon defendants for the goods before this suit was commenced (which was Nov. 16, 1857). Defendant admitted he had the goods, but refused to give them up. (See pages 15 to 18.) Plaintiffs also proved their ownership of the goods by Shuball W. Smith (pages 18 to 70), and also by other witnesses, and their value, &c. (pages 71 to 75).

Defendants offered to prove certain proceedings in two attachment suits against De Witt C. Davis and Darius A. Barton, one in favor of Andrew Cameron and others, and one in favor of Amos R. Eno and others, said proceedings were taken in the Circuit Court of Cook county, Ill.

"Plaintiff objected to the introduction of any suits pend-
"ing or commenced in another court, to which they were
"neither parties nor privies, and of which they had no
"notice." The court admitted the evidence "to show the
"circumstances and history of the case." (See page 75.) In the case of Cameron, &c., the Garnishee process was dated 17th of November, 1857, and defendants' answer to

the interogatories was filed March 22, 1858, in which the defendant admits the goods arrived at Chicago Nov. 3, 1857, and since then the goods had been "*and still are in my possession.*" (Pages 75 and 76.) And it appeared defendants in that suit were not served, and did not appear, nor was any property attached or levied upon. (page 77). In the other attachment case nothing was shown but the execution. It was not shown when or how commenced, or that in fact there was a *judgment* in either case.

1.—Defendant, as a common carrier, cannot dispute the ownership of plaintiffs, and is bound to restore the goods to plaintiffs, unless such delivery is prevented by the act of God, or by public enemies, and without any fault on his part. *Edwards on Bailments*, 535, 539.

It is an exception to this rule that they have been taken from the carrier by some legal and paramount authority, so he cannot make delivery. It appears defendant had the goods in Chicago November 3, 1857, and retained them there (by collusion with plaintiffs in the attachment suits), until the first of December, 1858, more than a year afterwards. He told plaintiff's attorney *before Nov.* 16, 1857, *that he had the goods in his possession, and under his control, and refused to give them up when demanded by plaintiffs* (*pages* 15 *and* 16.) And he states in his answer to interrogatories, that *they arrived in Chicago November* 3, 1857, *and had since been in his possession*, "*and are still in my possession*," and this answer bears date March 22, 1858 (page 75). Why not forward or deliver them to plaintiff? *No reason is shown!*

Plaintiffs proved an undisputed title to the goods, but all that proof was immaterial and unnecessary, as between plaintiffs and defendant, the carrier they had

employed. A tenant cannot dispute his landlord's title, or a carrier the title of his employer.

And these goods were in his possession, and had not been taken from him by any legal and paramount authority, or levied upon or taken in any way when they were demanded. Defendant wrongfully refused to deliver to plaintiffs their goods.

II.—The evidence renders the conclusion unavoidable, that there was collusion between the plaintiffs in the attachment suits and defendant. And defendant was acting in violation of his duty as plaintiff's carrier, in not forwarding the goods, and in not delivering them to plaintiff on demand.

III.—Defendant showed no defence.

1.—The attachment suits were no evidence against plaintiffs.

3.—There was no service, either upon the defendants in these suits, or by attaching property, and the proceedings were void.

3. The proof was insufficient to show a valid judgment and execution in either case.

4. And in any event, they could not effect plaintiff's rights, or afford any justification for defendant's refusal to deliver plaintiff's property to them when demanded, and when defendant had it in his possession and under his control.

After all, defendant's evidence (which was inadmissible to affect plaintiff's rights, and so held), the jury found a verdict upon the facts in favor of plaintiffs. That verdict was right and just, and should not be disturbed.

IV.—As to the judge's charge. Defendant asked the court to charge:

1.—"That a common carrier could not be guilty of a conversion by a qualified refusal, when he claimed no interest in the goods himself, and he had shown reasonable grounds of dispute as to the title." (Page 80.)

This charge could not properly have been given. In the first place there was no *qualified* refusal, the refusal was absolute and unqualified. In the second place defendant had not shown anything to disprove plaintiff's title, or to bring it into question and had no right to do so. The reason defendant gave for his refusal, that he intended to keep the goods till the garnishee suit was decided, showed him acting in collusion with the men who were attempting to claim plaintiff's property; plaintiffs had no notice of the suits and could not defend; defendant did not defend; but held the property in Chicago, refusing to send it on or deliver it up, until *ex-parte* and void proceedings, on pretended attachment suits could be got up, upon the application of an attorney (noted for such proceedings) and could be so arranged as to allow them to take the property from the plaintiffs.

The charge given on this point was quite as favorable to defendant as it should have been. (See page 81.)

2.—"That a qualified refusal by defendant after he was garnisheed, he only claiming to hold them to await the decision of title when there was reasonable grounds of dispute as to the title, was no conversion." (Page 80.)

The court should not have charged this.

1.—There was no *qualified* refusal.

2.—There was no reasonable dispute as to title.

3.—Defendant cannot dispute plaintiff's title.

4.—The proceedings were *ex-parte*, and there was to be no trial of the title of plaintiffs.

5.—Defendant held them after demand merely to get some excuse to deliver them to some other person than plaintiffs.

The charge given (upon the facts proved) was correct, and is sustained by principle and upon authority; it is not necessary to cite cases or authorities to support it, none can be produced to invalidate a single position taken in his charge by the Judge.

The question as to the conversion was fairly submitted to the jury upon all the evidence, and that was all defendant could ask. *The proof showed a conversion.*

1 *Mason, C. C. R.*, 319, 440. 1 *Wash., C. C. R.*, 176. 1 *E. D. Smith, (N. Y.,)* 552. 2 *do.*, 121, 132. 8 *Md.*, 148. 9 *Cushing (Mass.,)* 148. 10 *John, (N. Y.,)* 172. 1 *Baily*, 546. 1 *N. & M.*, 592. 6 *Mass.*, 422. 3 *Stewart*, 46. 7 *John*, 254, 302. 2 *John cases, N. Y.*, 411, *and note.* 2 *Mass.*, 398, 8 *John* 445.

Had the court instructed the jury that the proof showed a conversion, it would have been right. There was sufficient evidence of a conversion.

Defendant did not move for a nonsuit, but asked instructions, equivalent to saying to the jury that the proof was insufficient. The court

properly refused so to instruct the jury, and left the question of conversion to the jury as a question of fact, upon all the evidence. Of this defendant cannot complain.

V.—Smith was a competent witness; he had no interest in the event of this suit, between plaintiffs and their carrier; the plaintiff's title could not be disputed by defendant, or the question of title tried: proof of plaintiff's ownership by him was unnecessary: all that was material for plaintiffs to prove was proved by other witnesses.

VI.—This judgment should be affirmed: the verdict was right and just: and none of the exceptions were well taken; indeed it is evident this writ of error was brought merely *to delay* plaintiffs in collecting their judgment.

HENRY BENNETT,

Attorney for Defendants in error.

REPLY TO POINTS OF PLAINTIFF IN ERROR.

Solomon Davis and *Joseph Barton*, plaintiffs, in the court below, owned certain goods, in Janesville, Wisconsin, which they employed defendant (Stiles), as a common carrier, to transport to Ilion, N. Y. Plaintiffs were in possession of the goods, and delivered them to defendant, as such common carrier, and took from him a written agreement to carry and deliver them to plaintiffs, at Ilion. (*Case, p.* 17.)

On the same day, Nov. 2, 1857, the goods were sent on, by railroad, to Chicago. There defendant improperly stopped the goods, and placed them in a warehouse; plaintiffs finding their goods were stopped at Chicago, on or before the 16th Nov., 1857, sent and demanded them of defendant. He refused to deliver them up, upon the ground that he had been summoned or notified in a garnishee suit, *making no other objection*, and admitting *the goods were in his possession and under his control.* (*Case, p.* 16.)

Defendant detained the goods until Nov. 17, 1858, more *than a year*, and then delivered them to *Seth L. Taylor*, or gave him an order to take them, who took and disposed of them. (*Case, p.* 79.)

I. It is conceded, and may not be disputed, that a *demand* and *refusal* are sufficient *evidence of a conversion*, unless some good and sufficient excuse or reason for the refusal is proved.

It is also conceded that plaintiffs demanded their goods of their carrier, defendant, before suit. And that defendant detained them, and refused to deliver them up to his employers. (*Points for Plaintiff in Error, p.* 26.)

This was a conversion. (4 *Wendell*, 613, 615. *See*

cases before cited, and 9 *Cushing* (*Mass.*), 148. 1 *McCord*, 504, 392. 4 *Hill* (*N. Y.*), 14. 1 *E. D. Smith* (*N. Y.*), 522. 1 *Taunton*, 391. 4 *Esp.*, 157.

In trover, proof of a demand and refusal throws on defendant the burden of proving the goods were lost or stolen without defendant's fault.

Angell on Common Carriers, § 38, *and note* 2, *and* § 63, *and note.*

Stopping plaintiffs' goods at Chicago, and detaining them in a warehouse, was of itself a conversion. It was a breach of trust in the carrier. He was assuming to control plaintiffs' property against their wishes, and in a manner inconsistent with their rights, and to enable some one else to claim or take the property from the plaintiffs.

1 *Bailey*, 546. 2 *E. D. Smith*, *N. Y.*, 121. 10 *John.*, *N. Y.*, 172. 6 *Mass.*, 422. 4 *Term R.*, 581. 14 *Wend.*, 215. 12 *Barb.*, 321.

Angell on the Law of Common Carriers, §§ 431, 432, 433. (*No legal excuse was shown*, § 63, *and note.*)

II. Defendant asked the court, in substance, to instruct the jury as a matter of law, that the evidence did not show a conversion. The court declined to do so, but submitted this as a question of fact to the jury upon all the evidence, who found a verdict for plaintiffs. (*Case, pages* 80, 81.)

Defendant now insists the judge erred, and that he should have instructed the jury as a matter of law that there had been no conversion proved.

1. Because defendant "*had shown a reasonable ground of dispute as to the title.*"

2. Because defendant "*only claimed to hold them*" (*the goods*) "*to await the decision of title.*" (*Case, p.* 80.)

The defendant's exceptions to the judge's refusal to give these instructions, is *really* the only point in the case.

A great many authorities are cited to show that defendant's refusal to give up the goods to plaintiffs, was not evidence of a conversion, sufficient to be submitted to the jury, which have no application to this case.

It is answered:

1. That when the goods were demanded of defendant, he did *not* dispute or deny plaintiffs' title. His only ground of refusal was that he had been *garnisheed* (summoned or notified in a garnishee suit by other parties). *The notice or summons served on him in that proceeding, was his only ground of refusal. He is now confined to that.*

   1 *Campbell*, 410. 2 *John. Cases, N. Y.* 411. 9 *Com. L. R.*, 302, *S. C.*

   It is conceded, the mere summons or notice of that proceeding, by persons shown to have no right, is no defense to this action, and that the charge of the court "that the mere fact of the goods being garnisheed" (or claimed) "as the property of third persons, did not of itself constitute a bar to the action," is not exceptionable. *Points of Plaintiff in error, pp.* 37, 38.

   "The disposing or assuming to dispose of plaintiffs' goods, without authority (and against his wishes, and refusing to deliver them to plaintiffs) is the gist of the action, and it is no answer for defendant, that he acted under instructions from others, who had themselves no authority." 6 *Wend.*, 609. 4 *Maule & Sel.*, 259. 6 *East.*, 538. 1 *Burr*, 20. 2 *Strange*, 813. 2 *Sand.*, 47, *e.* 2 *Phillips Ev.*, 126, *&c.*

   It is no stronger than if some third person had come and said to the carrier, "I claim

the goods." If upon a wrongful claim, the carrier delivers the goods to the claimant, it is at his peril.

2. It is an *unfounded assumption*, that plaintiffs' title was in dispute. There is not one word of evidence in this case to justify the allegation (or even in the garnishee proceedings so far as they are shown).

It appears plaintiffs had possession. That is evidence of title.

It also appears plaintiffs were *bona fide* purchasers, paying the full value of the goods. This is proof of title.

It appears Cameron & Co. claimed a debt against somebody else, and took and sold plaintiffs' property, which defendant refused to deliver to plaintiffs, and afterwards delivered it to a third person.

It was a fact, *undisputed*, on the trial of this suit, that the property belonged to plaintiffs.

They employed defendant as their carrier. Defendant could not dispute their title; and it appears they were not only his employers, but, in fact the true owners.

3. The title of plaintiffs cannot be disputed or questioned by defendant, who was intrusted by plaintiffs with their goods as a common carrier for transportation, and defendant was bound to deliver the goods to his employers, unless lost by the act of God or the public enemies, or taken from him by some paramount legal authority, so that he could not deliver them, and without any fault on his part. *Edwards on Bailments*, 503, 513, 535, 539.

4. Defendant had no right to set himself up as a judge, as to who had title, and to withhold the goods from his employers who were also the true owners. In doing so he acted at his peril, and became liable to plaintiffs.

This disposes of the *unfounded* pretense of a *disputed title*, and of all the cases cited by plaintiffs in error on this ground. And disposes of the only exceptions taken to the judge's charge upon the trial.

No such objection was made when plaintiffs demanded their property.

III. As to the notice of the garnishee suit upon defendant; and which was his sole ground of refusal when the goods were demanded.

It is conceded by plaintiff in error that the charge of the court "that the fact of the goods being garnisheed as the property of a third person did not of itself constitute a bar to the action, was correct and not exceptionable."

Points of plaintiff in error, pp. 37, 38.

1. This was a special proceeding prescribed by statute. And the statute mode must be shown to have been strictly complied with, to give the court jurisdiction. Enough is not shown to show the court had jurisdiction.

19 *John* (*N. Y.*), 39. 6 *Wheaton*, 119. 3 *Cains* (*N. Y.*), 129. 1 *Statutes of Illinois*, 229, § 4.

2. The only proof as to the garnishee proceedings, are exhibits A, B, C, D, and E. (*Case, pages* 75 *to* 79.) No application, affidavit or bond is shown to authorize the proceedings; nothing is shown which can legally show that the court ever had jurisdiction or any

legal proceedings before them in the garnishee suits. As to this, the court is one of limited and special jurisdiction.

6 *Wheaton*, 119. 11 *Wend.*, 647, 659. 12 *Wend.*, 9 *and* 11. *Willies*, 199; 1 *Cow.*, 316. 9 *Cow.*, 227, 300, 206.

3. "A proceeding by attachment is in derogation of the common law, and depends "entirely upon the statute for its support." 15 *Illinois R.*, 89.

"*Ex parte* attachment proceedings must be in strict conformity with the statute."

2 *Scammon's R.*, 15 *and* 17. 1 *Scammon*, 501. 12 *Ill. R.*, 358, 363. 22 *Ill. R.*, 455. 21 *Ill. R.*, 80; 11 *Ill. R.*, 20.

And this must be shown to give the court jurisdiction. Here it was not shown.

4. No judgment is shown to authorize the execution. 12 *Wendell*, 74. 16 *Wendell*, 516.

5. It appears the property was not levied upon, or taken from defendant. It therefore furnishes no excuse for his refusal to deliver the property to plaintiffs. It was still in defendant's possession and under his control.

And notice that some one else claimed it did not change the legal rights of plaintiffs, or the law that applied to defendant as a common carrier.

6. The summons was a mere notice to defendant, and no more an excuse for his retaining this property from his employers than if some person had said to him "I claim the property." If defendant, in consequence withheld the property, it was a conversion and rendered him liable to plaintiffs.

7. It is absurd to say that the property was in the *custody of the law* before it had been attached or *levied* on, and the cases cited are where it had been legally levied upon, and left with some person afterwards.

The proof here shows it was in defendant's possession and under his control for more than a year after, and he finally delivered it, not to plaintiffs, but to Seth L. Taylor, Nov. 17, 1858. "*Stiles gave him an* "*order and upon the order he went and took the goods.*" (*Case, page* 79.)

8. Stiles (defendant), not only refused to let plaintiffs have their property, and finally delivered it to some one else. But he made a false return to help on the attachment proceedings, viz.:

"I do not know to whom the goods be-
"long. But they are claimed to be the
"property of one Davis, but whether he is
"defendant in this suit deponent saith not."
(*Case, page* 76.)

He knew that the goods belonged to *Solomon Davis and Joseph Barton*, of whom he had received them, and to whom he had given his agreement to transport them to Ilion, N. Y. He knew that *Dewitt C. Davis* was the Davis named in the attachment proceedings. But he made such a return as to leave it to be understood they were the same person.

Had he made a *true* return, stating of whom he received the goods, and that they were in his hands, as a common carrier, and he was bound to return them to his employers, it would have been a perfect defense,

and, upon this answer, no judgment could have been taken. (12 *Ill. R.*, 358, 365.)

Angell's Law of Common Carriers, §§ 46, 67, 148, 220.

IV. The bill of sale, in writing, was admissible as evidence; and the mass of cases cited do not deny this.

As to whether the goods in question were the same depended upon all the proof given as to the identity, number of boxes, quantity, value, &c. On this subject the usual evidence was given, and it was satisfactory to the jury.

The objection to the bill of sale was because it did not purport to describe the property in the declaration, and as incompetent.

The first objection was immaterial whether it purported to describe the goods or not. If, in fact, a sale was made of the goods mentioned, and other proof showed they were embraced in the declaration.

The last objection was too general.

If the sale of the goods was a fact proper to be proved, the writing was admissible; and, if admissible for any purpose, it cannot now be objected to as erroneous.

12 *Wend.*, 504. 3 *Park.*, 569. 4 *Smith, N. Y.*, 448. 4 *Kernan*, 539.

On the case and exceptions, defendant insists the judgment should be affirmed, with costs.

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Defendant's Attorney.

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IN THE

SUPREME COURT

OF THE UNITED STATES.

EDMUND G. STILES,
Plaintiff in Error,
Vs.
SOLOMON DAVIS, and
JOSEPH BARTON,
Defendants in Error.

No. 116.

ABSTRACT OF RECORD AND POINTS AND AUTHORITIES

FOR PLAINTIFF IN ERROR.

EDWARD M. DEWEY, Counsel,
FOR PLAINTIFF IN ERROR.

BEACH & BARNARD, PRINTERS, CHICAGO, ILL.
1860.

IN THE SUPREME COURT,

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EDMUND G. STILES,
Plaintiff in Error,

vs.

SOLOMON DAVIS, and JOSEPH BARTON,
Defendants in Error.

ABSTRACT OF RECORD,

And Points and Authorities for Plaintiff in Error.

PLACITA — Circuit Court of the United States of America for the Northern District of Illinois: Before Hon. THOMAS DRUMMOND, Judge of the District Court of the United States in and for the Northern District of Illinois, the 18th day of June, 1859.—Page of printed record, 3.

PRECIPE — Page 3, print. — Northern District of Illinois, United States of America: Solomon Davis and Joseph Barton *vs.* Edmund G. Stiles: Clerk directed to issue summons in a plea of trover, returnable to the December Term, 1857; plaintiffs' damages five thousand dollars. Dated and filed Nov. 16th, 1857.

SUMMONS—Page 4. — Issued November 16th, 1857, and served the same day.

NARR.—Pages 5 and 6, printed record of December Term, 1857. Narr. contains two Counts:

First Count alleges,

That the plaintiffs, on the fourteenth day of November, A. D. 1857, at the city of Chicago, were lawfully possessed, as of their own property, of twelve boxes, one trunk, and one bale, containing dry goods of the value of four thousand dollars; That the plaintiffs casually lost the said goods; That they came to the possession of the defendant by finding; That the defendant, knowing said goods to be the property of the plaintiffs, although often requested so to do, refused to deliver said goods to the plaintiff, but converted and disposed of the same to his own use, to plaintiffs' damage $5,000.

Second Count alleges,

That the plaintiffs, on the second day of November, 1857, at Janesville, in the State of Wisconsin, were lawfully possessed, as of their own property, of certain goods as in the first count mentioned; and being desirous of having the same transported and conveyed from Janesville to Illion, in the county of Herkimer and State of New York, contracted and agreed with the Union Dispatch Company for the transportation and conveyance of said goods from Janesville to Illion aforesaid, for a compensation agreed upon, and the said goods and chattels were then and there delivered to said Union Dispatch Company for transportation, being twelve boxes, one trunk, and one bale, marked in characters "Diamond H", and were dispatched by railroad for their destination aforesaid; That the said goods arrived at Chicago on or about the third day of November, 1857, and were received by and went into the custody of the defendant—then and there being the agent of said Union Dispatch Company—who neglected and refused to

forward and dispatch the same to their destination, but retained the custody thereof; That the plaintiffs demanded said goods of the defendant, who refused to deliver them up, but converted and disposed of said goods to his own use.

PLEA—Page 7, printed record. Filed Dec. 23, 1857.
Not guilty.
Special Pleas—Pages 7, 8, 9, 10. (Withdrawn, on demurrer; printed record, page 13.)

REPLICATION—Page 11, printed record. To first plea. Filed Dec. 30, 1857.

DEMURRER—Pages 11 and 12, printed record. To special pleas.

ORDER ON DEMURRER—Page 13. Sustained to special pleas, with leave to defendant to withdraw same.

EMPANELLING JURY—Page 13.

VERDICT OF JURY—Page 13. The Jury find the defendant guilty, and assess the damages of the plaintiff at the sum of three thousand and forty-one dollars and fourteen cents.

NEW TRIAL—Motion for. Page 13.

NEW TRIAL DENIED. Page 14.

BILL OF EXCEPTIONS. Page 14.

ORDER REFERRING taking testimony to Commissioner. and stipulation that same be taken before O. R. W. Lull, Notary-public. Page 14.

GIDEON W. DAVENPORT'S Deposition—Page 15, printed record. Testified:

I am one of the attorneys for the plaintiffs. The defendant Stiles, in November, 1857, was in the business of the transportation of goods and merchandise from one section of the country to the other, and was doing business under the name of the Union Dispatch Company. His place of business was at the city of Chicago.

Deft. a Common Carrier.

A short time previous to the commencement of suit, I made a demand on Mr. Stiles, on behalf of the plaintiffs, for the goods mentioned in a receipt which I then had and which witness says were the same goods described in declaration. The receipt which I handed him is the same now produced here by me. (Page 16: Receipt, marked "Exhibit A.")

Demand.

I demanded the goods of Mr. Stiles, who replied, after looking over the receipt, that he had the goods, or had stored them, but should not deliver up the goods, assigning the reason that he had been garnisheed in another suit. He stated that he should not deliver up the goods on my demand, but should hold them till the garnishee suit was decided. (Page 16.) The defendant said in substance that the goods were in his possession or under his control, but did not state any specific place where they were; but said they were in a warehouse, or stored.

Demand refused.

Reason of refusal

The defendant claimed no personal interest in the property, but claimed that he was protected under the garnishee process, and volunteered no statement as to how the goods came into his pos-

Defendant claimed no interest.

session. Understood the defendants in the garnishee suit to be young Davis and young Barton. Had no written order from the plaintiffs to get the goods, but was acting under the direction of Mr. Cooley, who was or claimed to be the attorney for the plaintiffs (page 17); and the demand was made after consultation with Mr. Cooley and under his directions. The plaintiffs, I think, live at Garrettsville, New York. We have received letters from them postmarked at that place. Have no personal knowledge of their residence.

No written authority.

Pltfs' residence.

EXHIBIT "A"—Pages 17, 18—Being the defendant's receipt for goods, as follows:

Union Dispatch Company—E. G. Stiles & Co., Proprietors,
General Western Office, 13 Dearborn street, Chicago.

No. JANESVILLE, WIS., Nov. 2, 1857.

RECEIVED IN STORE from Benjamin Cooley, attorney for Solomon Davis and Joseph Barton, 12 boxes, 1 trunk and 1 bale dry goods, to be forwarded to Illion, Herkimer county, N. Y., at $2.15 per 100 lbs., subject to the order of Solomon Davis and Joseph Barton, upon the surrender of this receipt and payment of charges. Loss by the elements at owners' risk.

SCHOFIELD & CURTIS, Agents.

SHUBAL W. SMITH'S Deposition—Page 18—To the introduction of which—

The said defendant by his counsel objected, on the ground of the interest of the said Smith; and also to the reading of the exhibits marked B, C, D, and E, to said deposition attached, on the ground that the same were incompetent and improper to be submitted to the jury; each of which objections the said Judge overruled and allowed the said deposition and exhibits to be read to the jury, to which decision of

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the said Court the said defendant by his counsel did then and there except.

SHUBAL W. SMITH'S Deposition—Printed record, page 18.

Counsel objected to witness, on account of his being interested.

On *voir dire*, testifies :

Assignee of Davis & Barton.

Was the assignee of De Witt C. Davis and Darius A. Barton. Was their general assignee for the benefit of creditors, and the title to the property came through him as such assignee.

On his *examination in chief*, the witness testified:

Execution of Bill of Sale. p. 19.

Reside at Janesville, Wisconsin, and know the plaintiffs. I executed exhibit marked " B ", purporting to be a bill of sale of the property in question.

Objection to admission of Bill Sale, page 19.

The admission of this exhibit objected to on the ground that it does not purport to convey the property described in the declaration ; and, also, that it is incompetent evidence.

The bill of sale, marked " Exhibit B", was then introduced, and offered in evidence under objection.

Sale of the Property, page 19.

I sold the plaintiffs some property on the 30th day of October, 1857 ; it consisted of a general stock of dry goods, and, also, a number of accounts due to Davis & Barton, against persons living or supposed to live in Otsego county, New York. A bill of sale of the goods and accounts was rendered and receipted, and the paper marked Exhibit B is the bill of sale made on said sale.

I had possession of the goods as assignee of Davis & Barton, and sold them to Solomon Davis and Joseph Barton, the plaintiffs in this suit, through their agent, B. M. Cooley, and I delivered the goods to him as their agent or attorney. Smith's possession.

The value of the goods, at the time of the sale, was two thousand seven hundred and seventy-nine dollars and eighty-four cents. Value of Goods. Page 19, Record.

The counsel for the defendant objected to this question, on the ground that the goods sold do not purport to be the goods described in the declaration; nor is their value at the time of sale competent proof in this suit. Objection to proof of value, p. 19.

The goods mentioned in Exhibit "B" were boxed in the store, with the exception of a bale or two of bats, and marked "Diamond H," Illion, Herkimer county, New York, and delivered to draymen and by them taken towards the railroad depot. (Page 20.) Goods boxed, mkd. & directed, p. 20.

There were about a dozen boxes and packages, and might have been more. Number of boxes page 20.

I understood at the time of the sale that the plaintiffs lived at Garrettsville, Otsego county, New York. Plffs' residence, page 20.

At the time of the sale, Benjamin M. Cooley resided at Janesville, Wisconsin. He died in January, 1858. Cooley's residence.

I am acquainted with the handwriting of the plaintiff in this case. Plaintiffs' handwriting.

Sallie M. Davis resides at Garrettsville, Otsego county, New York, and is the daughter of Solomon Davis. Residence of Sallie M. Davis, p. 20.

Proof and admission of Exhibits 'C' and 'D,' p. 21 print. rec.

The witness was then asked to look upon the papers shown to him and state whether the names of Solomon Davis and Joseph Barton, attached to said papers as subscribing witnesses and as principals, are their signatures. The witness answered, and believes them to be their signatures. Papers were offered in evidence, and marked by commissioner "C" and "D". Defendants' counsel objected to the admission of the same, on the ground, first, of their being incompetent evidence; second, on account of their not being properly proved. The papers marked C and D offered in evidence by plaintiffs' counsel were then withdrawn, whereupon the defendant's counsel withdraws his objections to admissibility of said exhibits "C" and "D"; and the same are reproduced by plaintiffs' counsel, offered in evidence, and admitted, marked as above. (Printed record, page 21.)

The instrument making me the assignee of De Witt C. Davis and Darius A. Barton was in writing.

Assignment, p. 21.

The execution of the assignment was admitted, and the same was offered in evidence, under objection, and marked "Exhibit E."

Possession under assignment, p.21.

I believe I took possession of all the property mentioned in the assignment and inventory annexed.

Sale of Goods page 21.

I sold a portion of it from the store at retail and jobbing the balance. I sold to the plaintiffs in this suit, amounting to two thousand eight hundred and forty-eight dollars and sixty-two cents,

being the same goods and accounts mentioned in "Exhibit B."

Received as the consideration of this sale, as cash, by agreement, the preferred paper under the assignment; first to receive all notes or claims preferred in the assignment to other parties than to Solomon Davis and Joseph Barton. The amounts credited on the bill of sale were received by me as the consideration of said sale, and appear to be in notes and other vouchers. These notes and vouchers the witness produced, and were marked by the commissioner "Exhibit F", annexed, and numbered from one to eleven inclusively. (Printed record, page 22.)

Consideration of Sale, page 1

Notes and vouchers, page 22

On *cross-examination*, page 22, witness testified:

The firm of Barton and Davis did business at Janesville. The plaintiffs are fathers respectively of my assignees.

I presume the assignment was executed on the day it bears date. Dewitt C. Davis first spoke to me about it, and asked me if I would be assignee. I consented. I talked with no other person than Dewitt C. Davis with regard to any assignment, and am inclined to think he said there had been a previous assignment to the plaintiffs which was void as they lived out of the State.

Date of Assignment.

Previous Assignment.

The assignors were retail merchants in the city of Janesville, previous to assignment, and had been engaged in business a year or more there. I should think from three to six hundred dollars of the debts due to them, from their Janesville business, came into my possession as assignee. They claimed to do a strictly cash business.

Assignors business, page 21.

Amount of Davis & Barton's liabilities, p. 23.

Davis & Barton owed, I think, five thousand dollars, more or less, over and above the preferred indebtedness.

Amount of Goods received as Assignee, p. 23.

The amount of goods that came to my hand, as assignee, was six thousand six hundred and thirty three dollars.

Amn't received from assets.

Received from the assets assigned to me, prior to the sale to the plaintiffs, not far from three thousand dollars, and paid the money upon the preferred claims, under the assignment, and paid nothing to the plaintiffs in this suit, from the amount received, previous to the sale.

Disposition of Assets, page 23.

The witness then stated the various demands and claims that he had paid.

I paid out all received except the costs and charges. Have not made any charges yet as assignee, and have no money in my hands belonging to the assigned estate.

Am't pd. plaintiff, page 23.

I paid to Cooley on preferred paper belonging to Solomon Davis or Joseph Barton, or both, three hundred and seven dollars and seventy-seven cents (pp. 23–24), and he accepted for it as attorney for them.

Sale of Notes to plaintiffs, and Consideration. Pages 23 & 24.

I sold to the plaintiffs, through their agent Cooley, two notes amounting to about $500, both of them secured by mortgage on real estate lying somewhere in Northern Wisconsin, for about $525, (see pages 23 and 24), and took up with the proceeds some of the preferred paper. In payment I received a note to Solomon Davis on which was due $821.98, which note is marked "Exhibit B"; also $10.79, being the balance due on another note to the same party. (p. 24.)

Page 24.

I never gave anything to the assignors, except for their services in the store, after the assignment, which I think was at the rate of about $40 per month.

Amt. pd. Assignors. Page 24.

Davis was in my employ about forty days or less, and Barton about fifty days or less.

Mr. Cooley stated to me that he wished to buy the stock, saying that he was authorized by them to buy at eighty cents on the dollar, New York cost. He then asked me if I would receive preferred paper for the goods. I answered that the goods were to be sold for cash; that I supposed preferred paper was cash, and could be received as such, provided that all the preferred paper preferred to parties other than the plaintiffs was first paid. Within a day or two from that time, he came to me and stated he was authorized by the plaintiffs to purchase the goods on my proposition. That closed the trade, and we commenced taking an inventory the same evening. The plaintiffs gave me a stipulation in writing allowing me to pay all preferred debts previous to paying them; this was given two or three days after the assignment.

Negotiations with plaintiffs' agent. Page 24.

Piffs' agreement to pay other preferred Debts.

I think the bill of sale, marked "Exhibit B", is in the handwriting of DeWitt C. Davis, except the signature. I took the inventory, assisted by the clerks in the store, Davis and Barton, the assignors, and, I think, by John S. Parker. There was an error in extending the amount in the footing, same in bill of sale, to the extent of eighty-eight dollars and seventy-seven cents, which was

Inventory—How and by whom taken. Page 24.

Page 25. corrected by deducting from the bill, as appears on its face. The extensions on the bill are the New York cost prices.

Page 25. Plaintiffs were not present during the negotiations for the sale.

Consideration of Vouchers, mkd. "F". Page 25. I first saw the vouchers marked "Exhibit F" in the actual possession of B. F. Cooley on the 20th or 21st day of October, 1857. Know nothing of the consideration of these vouchers.

Assignors left Janesville. P. 25. DeWitt C. Davis left Janesville for the East about the time the goods left; nor has he nor Barton, the assignors, resided in Janesville since the sale; Barton may have remained there about three weeks subsequent to the sale, about ten days of the time in assisting me in collecting accounts.

Amt. paid out after Sale. P. 25. I paid after the sale $307.77, but do not know whether it was collected after the sale or before. I paid some of the expense accounts, and transferred the notes, above referred to, to Cooley, and received in return the note marked "Exhibit G."

Never seen goods in defendant's possession. P. 25. I have never seen the goods mentioned in the bill of sale, nor any portion of them, in the possession of the defendant. There may have been some household goods or articles of Davis' put into the boxes, but not to my knowledge.

All of the articles mentioned in the bill of sale, except the bats, were put into the boxes. One bale of the bats was shipped and sent with the balance of the goods; the other bats were sold by Mr. Cooley.

Value of goods at demand. Page 26.

I know nothing about the goods, or their value, at the time the demand was made, nor when the demand was made.

The Garrettsville accounts were dated in 1855 and 1856; I believe the value of them to have been eighty-eight dollars, more or less; my means of forming that opinion are general knowledge of the value of petty accounts after having laid uncollected from one to two years, and information received from the assignors.

BILL OF SALE—Pages 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 — Being Exhibit "B."

The bill of sale is headed—

Solomon Davis and Joseph Barton,
by their attorney B. M. Cooley,
Bought of S. W. Smith, assignee of Davis & Barton.

This bill of sale purports to embrace the items of goods sold, and shows as a sum total	$3,585	92
Less 20 per cent	717	18
	$2,868	74
Less as agreed		13
	$2,868	61
Less errors in extension	88	77
	$2,779	84
Garrettsville accounts, amounting in gross to $284.21, sold for	88	77
	$,2868	61

Garrettsville accounts assigned to Sol. Davis and Joseph Barton, for $88.77.

RECEIPT OF PAYMENT—Pages 40 and 41.

The exhibit also shows a receipt of payment, dated Janesville, October 30, 1857, of Solomon Davis and Joseph Barton, of various promissory notes—Among which were five promissory notes, made by Davis & Barton, of various dates, payable to the order of Solomon Davis, one of the plaintiffs, amounting to the sum of $1,907.58.....$1,907 58

An endorsement on note of Davis & Barton to Sol. Davis.....	100 00
Endorsement on note of Davis & Barton to Joseph Barton.....	200 00
Note of Davis & Barton to Sallie M. Davis..	55 00
Note of Davis & Barton to Charlotte Davis...	77 65
Two notes of Davis & Barton to M. D. Cumming	528 00

POWER OF ATTORNEY—Exhibit "C"—Page 41.

From Joseph Barton to Benjamin M. Cooley; dated October 29, 1857.

POWER OF ATTORNEY—Exhibit "D"—Pages 41 & 42.

From Solomon Davis to Benjamin M. Cooley; dated October 29, 1857.

ASSIGNMENT — Exhibit "E", Page 42.

From Dewitt C. Davis and Davis & Barton, copartners under the name, style and firm of Davis & Barton, to Shubal W. Smith; dated September 28, 1857: For the benefit of creditors, and convey all property described in "Schedule A", thereunto annexed, and provides:

Preferred Debts. page 41.

FIRST—For the payment of the debts and claims mentioned in Schedule "B" in said assignment.

Page 42.

SECOND—After that, all other partnership debts.

Page 42.

THIRD—Out of the remainder, all of the individual debts.

SCHEDULE "B", Pages 45–46.

Schedule "B" includes list of preferred indebtedness, and among others :

Solomon Davis, one of the plaintiffs, promissory notes amounting to about.....	$1800 00
Joseph Barton, prom. note, about	400 00
Norman Moore, prom. note made by Davis & Barton, endorsed by Solomon Davis,.....	500 00
Bank of Cooperstown, two notes endorsed by Solomon Davis and Joseph Barton, $500 each,.....	1000 00
Moses D. Cumming, two notes, endorsed by Solomon Davis, about.....	515 00
Sally M. Davis, promissory note, endorsed by Solomon Davis, ...	50 00
Solomon Davis' endorsements above mentioned, and all his endorsements for Davis & Barton....	
Joseph Barton's endorsements above mentioned, and all his endorsements for Davis & Barton,....	
And other claims and demands, amounting in the aggregate to about	811 00

INVOICE OF GOODS taken by Davis & Barton—Marked "Exhibit A" to said assignment. Page 46.

This invoice shows the items of goods, and amounts in the aggregate to the sum of $6,633.12.

This invoice also contains a list of the notes made by Davis & Barton to Solomon Cummings, Joseph Barton and others. Pages 68, 69, 70.

AFFIDAVITS for deposition of DeWitt C. Davis. Page 31.

DEWITT C. DAVIS' DEPOSITION — Pages 72 and 73— Testified :

I reside at Cooperstown, Otsego county, New York. Am son of Solomon Davis, one of the plaintiffs. Residence.

Firm of Davis & Barton.

I resided on and previous to October 28th, 1857, at Janesville, Wisconsin, and was engaged in the mercantile business there; was one of the firm of Davis & Barton; and the name of my partner was Darius A. Barton; and that firm had been doing business at Janesville, Wisconsin, about eighteen months prior to the 28th day of October, 1857. The firm was dissolved about the 28th of September, 1857; and said dissolution was occasioned by the insolvency of said firm, and by a general assignment by said firm for the benefit of its creditors.

Dissolution.

Assignees possession.

Shubal W. Smith took possession of the assets and effects of the said firm as assignee, under said assignment, immediately after the execution of the said assignment.

The assignee sold at retail the property assigned, for about four weeks, and sold what remained to the plaintiffs in this suit.

Sale of Goods.

The goods thus sold consisted of the usual variety of goods retailed in dry goods stores, and were purchased by me in New York city. Have been engaged in the dry goods business about nine years, and the cash value of the goods so sold and delivered to the plaintiffs, at the time they were sold, was about twenty-eight hundred dollars.

The purchase and sale of the said goods was consummated with the said plaintiffs by Benjamin M. Cooley their agent, and the goods were delivered to their said agent.

Goods boxed up.

After the sale of goods, they were packed up

in the store, being in all twelve boxes, four bales of batting and one trunk.

They were marked "Diamond H", and the address, Illion, Herkimer county, New York, and all were shipped excepting three bales of batting. How marked.

The plaintiffs' agent delivered the said boxes, bale and trunk of goods to Scoville & Curtis, the agents of the Union Dispatch Company, at Janesville, on the 31st October, 1857. Was present at the sale and delivery to the plaintiffs' agents, and saw the packing and boxing of the goods and the delivery of the same to the Union Dispatch Company.

CROSS INTERROGATORIES. Page 73.

Am not aware of any attachments being issued against me by whom defandent garnisheed.

I made no bargain for the transportation of the goods, and did not deliver them myself to defendant's agent.

I left Janesville I think on the 23d day of November, 1857, and have been residing since in Otsego county, New York, and was not, to my knowledge, in Chicago at the time defendant was garnisheed. Page 74.

JOHN S. PARKER — Witness for plaintiff— Page 74.
Testified :

Have lived in Janesville six years, selling dry goods. Helped take an inventory of the sale from Davis & Barton to Mr. Cooley, and helped take the invoice at Cooley's request. Did not know what became of the goods. That they were invoiced at New York prices, and were in good condition. Did not remember the exact amount, and thought eighty-five cents on the dollar was a fair value— a good trade for the buyers. Page 75.

DEFENDANT'S PROOF.

(PAGE 75.)

WM. J. GREENLEAF—Witness for defendant—Testified:

Am Deputy Clerk of the Circuit Court of Cook County, and have the custody of the records of said Court.

He testified that he had with him the records and papers of two attachment suits commenced in that court against DeWitt C. Davis and Darius A. Barton; and the papers copies of which hereto attached—marked "A", "B", "C", "D" and "E"—were introduced in evidence, and, by agreement of counsel, used, the same as if the whole record were in Court, and read in the cause.

The plaintiffs objected to the introduction of any suits pending or commenced in another Court, to which they were neither parties nor privies, and of which they had no notice; but the Court allowed them to be introduced, to show the history of the case.

INTERROGATORIES TO GARNISHEES—Exhibit "A". Page 75.

These interrogatories are in the Cook County Circuit Court, and in an action: *Andrew M. Cameron and others* v. *DeWitt C. Davis and Darius A. Barton.*

The plaintiffs allege that the garnishees summoned in this suit had, at the time when the garnishee process was served upon them in this cause, in their possession a large quantity of goods and merchandise belonging to the said defendants, in boxes marked "Diamond H".

Interrogatory First — Had you in your possession, or under your control, at the time when the garnishee process was

served upon you in this cause, any boxes or cases of goods marked "Diamond H"? If yea, how many boxes or cases were there?

Interrogatory Second — Where were said goods shipped from, how billed and marked, and where directed to—when were they shipped?

GARNISHEES' ANSWER—Exhibit "B". Page 76.

The answer is in the above entitled cause, and is as follows:

E. G. STILES, who has been summoned as a garnishee in the above entitled cause, for answer to the allegations and interrogatories filed by the plaintiffs herein, saith that on the 3d day of November, 1857, this deponent received, as one of the proprietors of the Union Dispatch Company, twelve boxes of goods, one trunk and bale, weighing, according to the bill for Janesville, 3870 lbs., marked (see original) "Diamond (H)", Illion, New York. They were received at Chicago, from the Chicago, St. Paul and Fond du Lac Railroad, and consigned to us by our agent at Janesville, Wisconsin, where they were shipped. That said boxes, trunks and bale were to be forwarded to said Illion; and were, at the time of the service of garnishee process upon me, and still are, in my possession. I do not know to whom the goods belong; but they are claimed to be the property of one Davis; but whether he is defendant in this suit deponent saith not; there are no names of owners upon the same, and therefore I cannot answer as to whom they belong.

ATTACHMENT WRIT—Exhibit "C". Pages 76 and 77.

This writ is issued in same cause. Amount of demand, $2,070.98; and direction to summon Union Dispatch Company as garnishee of goods and property shipped from Janesville, marked "Diamond H".

RETURN ON ATTACHMENT. Page 77.

Writ returned: No property found in my county whereon to levy, and writ served by reading to Edmund G. Stiles, agent of the Union Dispatch Company, as garnishee, Nov. 3d, 1857.

SALE ON EXECUTION—Exhibit "D". Page 77.

The certificate of the Sheriff, John L. Wilson by his deputy, shows that by virtue of an execution in the cause above mentioned, and also one in favor of Amos R. Eno and others, on the 17th day of November, 1858, he levied upon, and on the first day of December, 1858, time and place of sale having been duly advertised, did sell a quantity of goods therein described, for the sum of $1,299.92; and that the balance, after paying expenses, &c., being $1,127.11, was paid into court.

EXECUTION. Page 78.

Issued by the Clerk of the Circuit Court, Cook county, Nov. 4, 1858, directed to the Sheriff of said county, commanding him that of the goods and chattels, to-wit: twelve boxes of goods, one trunk and one bale, marked "Diamond H", Illion, New York, now in the hands of Union Dispatch Co., garnishees of De Witt C. Davis and Darius A. Barton, defendants, he cause to be made the sum of $2166 95, which Edward M. Cameron and others, in the Circuit Court of Cook county, recovered against the defendants for damages, and, also, the further sum of $18 80 costs.

RECEIPT ON EXECUTION—Page 78.

There is endorsed on this execution, under date of Dec. 3, 1858, a receipt by the plaintiff thereon of $762 83 for pro rata share, &c.

JOHN BATES - Page 79 — A witness for the defendant — Testified :

That he was custodian for the Sheriff of Cook county in the Fall of 1857. That he received the goods in question from the defendant, and kept possession of them until the sale on execution. That some of the goods in the boxes or trunk consisted of second-hand bed clothing and was marked "D. C. D." and "DeWitt C. Davis." That he recollected packages of goods marked "H" — that he did not know when. That he took them by the order of Deputy Sheriff Taylor to the store, and together with the plaintiffs in the suits, inventoried and had them sold. Saw the boxes opened and a large lot of the business cards of DeWitt C. Davis and Darius A. Barton were put up in a large box which contained sheets, sleeping room goods, comforters, &c. marked D. C. D.

CROSS-EXAMINATON. Page 79.

I had an order from Mr. Smith of the firm of Smith & Dewey, to go to Pickering's ware house — I found the goods there and told Pickering that I wanted them. Mr. Pickering had a bill for the goods which was submitted to Smith, and the charges reduced fifteen or twenty dollars. There were ten or fifteen packages of the goods — three dray loads.

SETH L. TAYLOR—Page 79—Witness for defendant—Testified :

Was Deputy Sheriff of Cook county. Sold the goods in question upon the execution marked "E", and another against the same defendants in favor of Amos R. Eno and others, and delivered the proceeds to the plaintiffs in execution.

Sold Goods on Execution.

Deliv'd Proceeds to Plaintiff.

CROSS-EXAMINATION.

Thinks he levied the executions on the 17th day of November, 1858; that he found the goods in South Water street;

they were first in the hands of the Union Dispatch Co.; he moved them to a warehouse. Stiles gave him an order and he went and took the goods upon his order.

CHAUNCEY T. BOWEN — Page 80 — a witness for defendant, Testified:

Have been for ten years engaged as a dealer in dry goods.

Value of Goods.

That he examined the goods in question in Sheriff's sales rooms, and valued the goods at fifty cents on the dollar, if bought as goods are ordinarily bought in New York. The goods were an ordinary retail stock of goods, and their value depends on styles, and a stock of goods of that kind would ordinarily deteriorate after a lapse of time

FRANCIS P. VAN WYCK—Page 80—Witness for defendant,

Testified to seeing goods, and that their value in November, 1857, in the condition he found them, would be rather under than over sixty per cent.

FITCH B. STACY—Page 80—Witness for defendant,

Saw goods; that goods were valued at forty cents on the dollar, supposing them to have been bought at a fair price.

INSTRUCTIONS REQUESTED by defendant's counsel and refused by the Court.

Instruction First. Page 80.

That a common carrier could not be guilty of conversion by a qualified refusal when he claimed no interest in the goods himself and he had shown reasonable grounds of dispute as to the title.

INSTRUCTION SECOND. Page 80 and 81.

That a qualified refusal by the defendant, after he was garnisheed, he only claiming to hold them to await the decision of title when there was reasonable ground of dispute as to the title, was no conversion.

INSTRUCTIONS GIVEN BY THE COURT. Page 81.

The Court instructed the jury generally upon the law of the case, and left the question, as to the right of property, to them; and refused, under the circumstances, to give the instructions requested by the counsel of the defendant, but, as to that part of the case, instructed the jury substantially as follows:

INSTRUCTION FIRST. Page 81.

That the jury were to determine, from the evidence, whether there had been a conversion. As a general rule, if the right of property was in the plaintiffs, a demand on the defendant, and a refusal by him to deliver up property in his possession, were circumstances from which the jury might infer conversion, open, of course, to explanation.

INSTRUCTION SECOND. Same page.

That if the plaintiffs were the owners of the goods, and they were delivered by the plaintiffs, or their agent, to the defendant, and received by him, or his agent, to be transported for the plaintiffs to their residence in New York, then the defendant was liable, under and according to the terms of his contract; and if he did not so transport them, or comply with his contract, the plaintiffs had the right to call on him to deliver up to them the goods; and if, upon such demand, he refused, it was for the jury to say whether it constituted, under the circumstances of this case, a conversion.

INSTRUCTION THIRD. Same page.

That in the contingency contemplated in the last preceding instruction, if the defendant declined to return or surrender the goods to the plaintiff, it was to be considered at his own risk or peril.

INSTRUCTION FOURTH. Same page.

That any proceedings in the State Court to which the plaintiffs were not parties, and of which they had no notice, did not bind them or their property.

INSTRUCTION FIFTH. Same page.

The Court left it to the jury to say whether there was any connivance or collusion between the attaching creditors and the defendant; and if there was, then the defendant could not rely upon those proceedings as an excuse for not delivering up the goods.

And the Court declined to charge the jury that the fact of the goods being garnisheed, as the property of third persons, of itself, under the circumstances of this case, constituted a bar to the action, but said to the jury they might consider that fact as a circumstance to be weighed by them, in order to determine whether or not there was a conversion.

DEFENDANT'S EXCEPTIONS. Page 81.

To the refusal of the Court to give the instructions asked, and to the giving of the above instructions by the Court, the defendant then and there excepted.

WRIT OF ERROR. Page 82.

BOND. Page 82.

CITATION AND SERVICE. Page 83.

CLERK'S CERTIFICATE. Page 84.

ASSIGNMENT OF ERRORS.

IN THE SUPREME COURT,

OF THE UNITED STATES.

EDMUND G. STILES,
Plaintiff in Error,
VS.
SOLOMON DAVIS, and JOSEPH BARTON,
Defendants in Error.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

I.

The *gist* of the action of trover is *conversion.*

Kelsey vs. Grisley, 6 Barbour's Supreme Court R. 440.

A conversion may arise either by a wrongful taking of the chattel, or by some other illegal assumption of ownership, or by illegal using or misusing it, or by a wrongful detention.

1 Chitty's Pleadings 140, 141.
Saund. Pl. and Evidence.
Kelsey vs. Griswold, 6 Barbour 440, per Edmunds J.
Heald vs. Carey, 9 Eng. Law and Eq. 429.
Raysdall vs. Williams, 8 Ired. 498.

Since, in this case, the property came into the possession of

the plaintiff in error as a common carrier, and there is no claim that he illegally used or misused it, or made any assumption of property over it, the only question left is whether he *wrongfully detained it.*

Where, as in this case, the goods have come into the possession of the defendant by delivery from the plaintiff, it is necessary, at least where the defendant merely detains them, to prove that he has refused to deliver them up upon a demand being made by the plaintiff.

3 Phillips' Ev., Cow. Hill and Edward's Notes, page 540, and cases cited in note 2.

The general rule is, that in such cases a demand and refusal are *evidence of conversion*, and not *per se* a conversion ;

Munger vs. Hess, 28 Barbour 75.
Chancellor of Oxford's case, 10 Rep. 566.
Mires vs. Soleburg, 2 Mod. 244.
Bull. N. P. 34.

and the refusal must be positive, absolute and unqualified.

Severin vs. Keppel, 4 Esp. 157.
Addison vs. Round, 7 C. & P. 285.
3 Greenleaf—See 644, notes 2 and 3.

There is no dispute, in this case, but that, after the goods were demanded by the plaintiffs, the defendant *detained* them from him. But to make this detention a *conversion* of the goods, it must have been *wrongful.* In order to establish the fact of *detention*, then, it must appear that the plaintiffs demanded the goods, and that the defendant refused to deliver them up on such demand. Such demand and refusal, however, can not be considered as *evidence of conversion*, unless it appear also that the detention was *wrongful.*

In this case the demand of the property was made by one Davenport, and the defendant refused to deliver up, assigning the reason that he had been garnisheed in another suit, but should hold them till the garnishee suit was decided; that the defendant claimed no personal interest in the property, but claimed that he was protected under the garnishee process.

See printed record, page 16; Abstract, page 4.

II.

The demand and refusal, in this case, are not evidence of conversion, because —

I. The refusal to deliver up the goods was a qualified refusal merely; and such a refusal, if the grounds for not delivering the property are reasonable, will not amount to a conversion.

3 Phillips' Ev., Cow., Hill, and Edwards' notes, page 541.

The refusal was based upon reasonable grounds.

Where a party making the refusal is ignorant who is the real owner of the property, and requires to be satisfied respecting the ownership, it has been held reasonable ground for a refusal.

Green vs. Dunn, 3 Camp. N. P. C. 215 N.
See also *Pattison vs. Robinson*, 5 Maule & Selw. 105.
Gunslow vs. Nurse, Bro. and Bing. 449.
Everest vs. Wood, 1 C. & P. 75.
Weymouth vs. Boyer, 1 Vesey Ju. 424.

And so where the servant of a company refused to deliver the plaintiff's goods, which were in one of their warerooms of which

he kept the key, without an order from the company, this refusal was held not to constitute a conversion.

Alexander vs. Southey, 5 B. & A. 247.
Thompson vs. Trail, 6 B. & C. 36.

And so if A finds the goods of B, and, upon a demand of the goods, answers that he knows not whether B be the true owner, and therefore refuses to deliver them, this is not evidence of conversion if A keep them from the true owner.

Isaac vs. Clarke, per Coke C. J., 2 Bulst 312.
Glinton vs. Nourse, 2 B. & B. 449.
Clark vs. Chamberlain, 2 M. & W. 78.

And so when a demand and refusal may be considered only as the result of a reasonable hesitation in a doubtful matter, it is not sufficient evidence to prove a conversion.

Robinson vs. Burleigh, 5 N. Hamp. 225.
See also *Dent vs. Childs*, 5 Stew. & Port. 383.

In *Zachary vs. Pace*, 4 Eng. 212—Where the plaintiff demanded of the defendant the goods sued for, and he answered that he had no claim to them himself, but would not give them up until he ascertained to whom they belonged, and the proof showed that the property was in dispute, and that the defendant had reasonable grounds to doubt the title of the plaintiff, it was held that such qualified refusal did not amount to a conversion.

See also *Taylor vs. Rhodes*, 26 Vermont 57.
Ingalls vs. Bulkeley, 15 Illinois, 224.
Wild. vs. Waters, 32 Eng. Law and Eq. 422.
Dowd vs. Wadsworth, 2 Dev. 130.
Page vs. Carpenter, 10 N. Hamp. 77.
Berkley vs. Howard, 2 Brevard 94.
Watt vs. Porter, 2 Mason 77.

Solomons vs. Dawes, 1 Esp. N. P. C. 81.
Philpott vs. Kelley, 3 Ad. & El. 106.
Caunce vs. Spanton, 7 M. & G. 903.
Davies vs. Vernon, 6 Ad. & El. 433 N. S.
Alexander vs. Southey, 5 B. & Ald. 247.
Coles vs. Wright, 4 Taunt. 198.
Shotwell vs. Few, 7 Johns. 302.

II. In connection with proof of demand and refusal, it must also appear that at the time of the demand the goods were in the possession of the defendant, and that he had it in his power to give them up.

Bull. N. P. 44.
Vincent vs. Cornell, 13 Pick. 294.
Nixon vs. Jenkins, 2 H. Bl. 135.
Edwards vs. Hooper, 11 M. & W. 366, per Parke B.
Smith vs. Young, 1 Camp. 441.
Kinder vs. Shaw, 2 Mass. 398.
Chamberlain vs. Shaw, 18 Peck, 278.
Leonard vs. Todd, 2 Met. 6.
Jones vs. Fort, 9 B. & C. 764.
Knapp vs. Winchester, 11 Vermont, 351.
Kelsey vs. Griswold, 6 Barbour 436.
Smith vs. Young, 1 Camp. 439.
Verrell vs. Robinson, 2 C., M. & R. 495.

At the time of the demand the goods were ***not in the*** possession of the defendant; they were, after he had been garnisheed, in the ***custody of the law***, and it was not in the power of the defendant to deliver them up.

THE GOODS WERE IN THE CUSTODY OF THE LAW.

See Statutes of Illinois, vol. 1, Cooke's ed., pp. 230–2 et. seq.

It is well settled, that property taken upon attachment is, in the hands of the officer, in the custody of the law;

Miers vs. Soleburg, 2 Modern 3 242.
3 Stephens' Nisi Prius, 2709.

and an attaching officer, having the special property in the goods, may maintain replevin, trespass, or trover, against any one who violates his possession or that of his servant or bailee;

Bedlam vs. Tucker, 1 Peck 289.
Ludden vs. Leavett, 9 Mass. 104.
Perley vs. Foster, 9 Mass. 112.
Warren vs. Leland, 9 Mass. 265.
Gates vs. Gates, 15 Mass. 310.
Gibbs vs. Chase, 10 Mass. 125.

and the authority of a bailee for safe keeping is subordinate to that of the officer, and he can neither sell nor loan the goods.

Odiorne vs. Colley, 2 N. Hamp. 66.

And precisely the same rule obtains as to the custody of the property in case of garnishment. Garnishment is an effectual attachment of the effects of the defendant in the garnishee's hands, differing in no essential respect from attachment by levy, except, as is said, that the plaintiff does not acquire a clear and full lien upon the specific property in the garnishee's possession, but only such a lien as gives him the right to hold the garnishee personally liable for it or its value.

Kennedy vs. Brent, 6 Cranch 187.
Parker vs. Kinssman, 8 Mass. 486.
Blaisdell vs. Ladd, 14 N. Hamp. 189.
Burlingame vs. Bell, 16 Mass. 318.
Swett vs. Brown, 5 Pick. 178.
Tindell vs. Wall, Busbee 3.
Tillinghast vs. Johnson, 5 Alabama 514.
Thompson vs. Allen, 4 Stewart & Porter 184.
Bryan vs. Lashley, 13 Smedes & Marshall, 284.
Watkins vs. Field, 6 Arkansas 391.
Martin vs. Foreman, 18 Arkansas, 249.
Harker vs. Stevens, 4 McLean, 535.

From the time of the garnishment, the effects in the garnishee's possession are considered as *in custodia legis*, and the garnishee is bound to keep them in safety, and is not at liberty to change them, to convert them into money, or to exercise any act of ownership over them.

Drake on Attachments, section 453.
Brashear vs. West, 7 Peters, 608.
Biggs vs. Kouns, 7 Dana, 405.

He acquires a special property in them as agent of the Court:

Erskine vs. Staley, 12 Leigh 406.

and is entitled to hold them until the question of his liability is determined, as well against the defendant as against any subsequent purchasers or pledgee.

Walcott vs. Keith, 3 Foster 196.

See also Drake on Attachments, section 290, 350, 271.
Brownell v. Manchester, 1 Pick. 232.
Gordon v. Jeneney, 16 Mass. 465.
Lothrop vs. Blake, 3 Foster 46.
Whitney vs. Ladd, 10 Vermont 165.

III. The defendant having been garnisheed before the demand of the property in suit was made, was acting merely as the custodian of the officer, and the goods themselves being *in custodia legis*, the defendant was bound to retain them, and the detention, therefore lacks the essential element of a conversion, in that it was not *wrongful*.

Upon this point. the authorities, both in this country and in England, are harmonious and decisive.

Brashear vs. West, 7 Peters, 608, decided by Chief Justice Marshall in 1833, expressly holds: "That goods garnisheed must undoubtedly be, to a certain extent, in the custody of the

law. "They are (says the learned judge) understood to be 'confided by the law to the garnishee; still, he must keep 'them safely, and he is not at liberty to change them into 'money, or to exercise any act of ownership over them."

JENNER *VS.* JOLLIFFE, 6 John. 9,

decided in 1810, holds the express doctrine that property attached in the hands of a bailee is in the custody of the law, and *that a refusal to deliver it up does not amount to a conversion.*

The same case, on appeal, was decided in 1812—9 John. 381—the court holding that when goods are seized by virtue of legal process, *they are in the custody of the law, and trover will not lie for them.*

The same principle has been recognized in NEW HAMPSHIRE.

FLETCHER *VS.* FLETCHER, 7 N. Hamp. 452,

was trover, for the conversion of certain promissory notes. The plaintiff deposited in the hands of the defendant certain promissory notes to be collected. Soon afterwards, process of foreign attachment was served upon the defendant as trustee of the plaintiff The plaintiff then demanded the notes of the defendant, who refused to deliver them, on the ground that he had been summoned as the trustee of the plaintiff. The refusal of the defendant to deliver the notes was held *not* to be evidence of conversion.

The same principle has also been decided in KENTUCKY.

GARVIN *VS.* LUTTRELL, 10 Humphrey 22.

McKinney. J., delivering the opinion of the court, says—

"All the authorities concur, that if the possession was law-'ful, as by delivery, finding, or bailment, there must be either

'direct proof of a conversion by evidence of some tortious act, 'or indirect evidence by refusal to deliver after demand. The 'demand and refusal do not necessarily amount to a conversion, 'but are only *prima facie* evidence of it; and if it be apparent 'there really was no conversion, the demand and refusal are 'inoperative, *as, if the property had been attached in the hands 'of the bailee or agent.*."

The same doctrine has been expressly recognized in ENGLAND. Thus, in

VERRALL *VS.* ROBINSON, 5 vol. Turwhitt's Exchq. R. 1069,

decided in 1835. Trover for a chaise. Pleas: first, not guilty; secondly, that the chaise was not, at the time of the supposed conversion thereof by the defendant to his own use, the property of the complainant in manner and form, &c.

Issues on both pleas.

At the trial before Baron Parke, the plaintiff had a verdict on the second issue; but the learned Baron, being of opinion that there was no evidence of a conversion, directed a verdict for the defendant.

The evidence was as follows:

The plaintiff was a coach proprietor, and the defendant the owner of a carriage depositary, in the city of London. One Banks hired the chaise from the plaintiff, and left it, with his own horse, at the defendant's depositary for sale While the chaise remained there, it was attached, in an action against Banks; and the defendant, on that ground, twice refused to deliver it up to the plaintiff, though on one occasion he admitted it to be the plaintiff's property.

On appeal, it was held by *Lord Abinger, C. B.:*

"The defendant's refusal to deliver the chaise to the plaintiff 'was grounded on its being on his premises in the custody of 'the law. That is no evidence of a wrongful conversion to

'his own use. After it was attached as Banks' property, by 'the process of the City Court, it was not in the custody of 'the defendant in such a manner as to permit him to deliver it 'up at all; and he assigned, as a reason for not giving it up to 'the plaintiff, that it was in the custody of the Sherifi's 'officer, under the attachment; and that if he gave it up, he 'should be bound to pay its value to the creditors of Banks."

ALDERSON B. "Though the chaise was on the defendants 'premises, and in his hands, at the time the plaintiff demanded 'it, it was there in the custody of the law. Had the defendant 'delivered it, as requested, he would have been guilty of a 'breach of the law."

This case is also reported in

1 Galis' Exch. 244.
4 Dowling 242.

This doctrine is also fully sustained by the ELEMENTARY WRITERS.

3 *Stephen Nisi Prius*, 2709.
2 *Greenleaf on Evidence*, sec. 645.
3 vol. *Phillips' Ev., by Cow., Hill & Edwards*, 541.

The refusal, then, of the defendant to deliver up the property on demand, so far from being a wrongful detention of it, was but doing precisely what the law compelled him to do—in holding it subject to the law. Had he delivered the property when demanded, he would have been guilty of a breach of the law, subject to an action of trover for their value, and they could have been followed and replevined by the defendant, to abide the event of the garnishment. The goods were in the custody of the law, and he had no power or control over them.

III.

In the light of the authorities already cited and referred to, there can be no doubt but that the law governing this case was correctly stated in the first and second instructions requested by counsel for the plaintiff in error and refused by the court.

Those instructions are as follows :

1. That a common carrier could not be guilty of a conversion by a qualified refusal, when he claimed no interest in the goods himself and he had shown reasonable grounds of dispute as to the bill. (See printed record page 80, abstract page 22).

This instruction is not only correct as a legal proposition, but is warranted by the facts in the case.

a. The defendant was a common carrier. (See printed rec. page 16, abstract page 4).

b. His refusal to deliver the goods when demanded, was a qualified refusal. (See printed rec. page 16, abstract p. 5).

c. He claimed no interest in the goods himself. (See printed rec. page 16 ; abstract p. 4)

d. And he had shown reasonable grounds of dispute as to the title. (See printed record, p. 16 ; abstract p. 4 ; cases cited in point 2, sub. 2.)

The second instruction was as follows :

2. That a qualified refusal, by the defendant, after he was garnisheed, he only claiming to hold them to await the decision of title, when there was reasonable ground of dispute as to the title, was no conversion.

This instruction states the law correctly, and was also warranted by the facts in the case.

a. The demand and refusal were made after the plaintiff in error was garnisheed. (Printed record, pp. 16 and 17; abstract, p. 4.)

b. The plaintiff in error stated, when the demand was made, that he should not deliver the goods, "but should hold them till the garnishee suit was decided." (Printed rec. p. 16; abstract, p. 4.)

c. The fact that a garnishee suit was pending afforded a reasonable ground of dispute as to the title. (See authorities cited in point 2.)

The Court erred in refusing to give those instructions as requested.

IV.

The Court erred in instructing the jury:

1. That "they were to determine from the evidence whether there had been a conversion." (See printed record, page 81; abstract, p. 23.)

In this case, the question as to whether the demand and refusal amounted to a conversion, or was evidence of conversion, was purely a question of law.

2. In instructing the jury that the defendant, as a common carrier, was liable under and according to the terms of his contract, and if he did not so transport them or comply with the terms of his contract, the plaintiff had the right to call on him to deliver up to them the goods; and if, upon such demand, he refused, it was for the jury to say whether it constituted, under the circumstances of this case, a conversion.

The above instruction is erroneous:

1. Because this action is not brought against the defendant for a breach of his contract as common carrier; but is in

4. In giving iustruction number 5 as follows :

"The Court left it for the Jury to say whether there was any connivance or collusion between the attaching creditors and the defendant, and if there was, then the defendant could not rely upon those proceedings as an excuse for not delivering up the goods."

There is no evidence whatever in the case showing or tending to show any connivance or collusion between the attaching creditors and the defendant. There were no facts whatever upon which to predicate such an instruction, and it was wholly gratuitous and unwarranted.

Where instructions are given without any facts to support them, it is error.

trover, for the conversion of the goods; and the only question in the case is whether he converted them to his own use, and not whether he neglected to transport them.

2. The only proof of conversion being the demand and a qualified refusal, it was for the Court to determine, as a question of law, whether such demand and refusal amounted to or was evidence of conversion.

3. In instructing the jury "that, in the contingency contemplated by the last preceding instruction, if the defendant declined to return or surrender the goods to the plaintiff, it was to be considered at his own risk and peril.

The effect of instruction number three is, to nullify the preceding instruction. The Court say, in instruction number two, that if, "upon such demand, he refused, it was for the jury to say whether it constituted, under the circumstances of this case, a conversion;" and follows that by saying "that in the contingency contemplated by the last preceding section, if he declined to return or surrender the goods to the plaintiff, it was to be considered at his own risk and peril."

Thus, after leaving it to the jury to say whether these circumstances amounted to a conversion, the Court takes the entire question from them, by saying *that the refusal was at his own risk and peril.* This was equivalent to saying that as a question of law, the defendant, "under the circumstances," was not justified in refusing to deliver up the property when demanded, and if not justified in so doing, or, if he did it at his own risk and peril, then, certainly, he was guilty of a *conversion* "under the circumstances." and that is in effect what the Court charged in instruction number three.

The Court also say:

"They declined to charge the jury that the fact of the goods being garnisheed as the property of third persons, of itself,

under the circumstances of this case, constituted a bar to the action."

With reference to this point, it is sufficient to say that no person requested the Court so to charge. The instructions asked for by the counsel for the plaintiff in error have already been given. Those were the only instructions requested and refused, and they certainly do not contain any such propositions as that stated above.

V.

The verdict of the jury is against evidence.

1. There was no conversion in fact by the defendant; the goods were sold by the Sheriff of Cook county under legal process. (Printed record page 77.)

2. The only evidence in the case to show conversion, is the demand and refusal; that being qualified and upon reasonable grounds, was no evidence whatever of conversion.

3 Conversion being the gist of the action, and that not having been shown in this case, the jury were not warranted in finding verdict for the plaintiffs.

4 The instructions of the Court were calculated to mislead the jury, as they were based upon the idea that the demand and refusal were sufficient without submitting to the jury the question of whether there were reasonable grounds of refusal, and at the same time giving to the jury a legal definition of what would constitute reasonable ground of refusal.

5. Again, the jury would be liable to be misled by the allusions of the Court in his charges numbers 2 & 3 to the "circumstances of this case." He does not state what "the cir-

cumstances" are that modiify this case or that required him to so charge. It was the duty of the Court to have called the attention of the jury to those modifying "circumstances," and informed them what was their legal bearing, and in what way they affected the legal rights of the parties. Some of the jury might have inferred from the charge that these "circumstances" favored the plaintiffs, while others might have supposed they favored the defendant. If any allusion was necessary to them, it seems clear that it should have been in such a manner that the jury could not have mistaken the meaning of the Court.

VI.

The deposition of the witness Shubal W. Smith was improperly admitted and received in evidence.

This witness was the assignee of DeWitt C. Davis and Darius A. Barton, and the title to the property in controversy came through him, as such assignee, to the plaintiffs, Solomon Davis and Joseph Barton. (See printed record page 18, and abstract page 6.)

He received a full price for the goods, and there was, therefore, a tacit and implied warranty that he was the owner and had a right to sell. He was, therefore, interested in the result of the suit, and that interest disqualified him as a witness.

Vibbard vs. Johnson, 19 John. R. 78.
Case vs. Hall, 29 Wendell 103.
Blasdale vs. Babcock, 1 Johns. R. 518.
Heermance vs. Vernoy, 6 Johns. R. 8.
Payne vs. Rodden, 4 Bibb, 304.
Mockbee vs. Gardner, 2 Harr. & Gill 177.
Ritchie vs. Summers, 3 Yeates 531, per Smith J.
Boyd vs. Bobst, 2 Dall. R. 91.
Coolidge vs. Brigham, 1 Metcalf R. 551.
De Freeze vs. Trimper, 1 Johns. R. 275.
Swett vs. Colgan, 20 Johns. R. 202.
Welling vs. Peters, 12 Sergt. & Rawle 181.

VII.

The exhibit Marked "B" (see printed record page 26 to 41. abstract page 13) was improperly received and read in evidence.

This exhibit purports to be a bill of sale from Shubal W. Smith, assignee of Davis & Barton, to the plaintiffs, and contains a list of all the goods sold, together with the prices fixed thereon, and a list of notes and accounts sold.

The evidence of Shubal W. Smith upon the introduction of the exhibit, is as follows: I executed the bill of sale marked "Exhibit B", and sold the plaintiffs in this suit some property; the property was sold on the 30th day of October, 1857; it consisted of a general stock of dry goods, and also of a number of accounts due to Davis & Barton against persons living or supposed to live in Otsego county, in the State of New York. A bill of sale of the goods and accounts was rendered and receipted. The paper marked "Exhibit B" is the bill of sale made on said sale. I think the bill of sale is in the hand writing of DeWitt C. Davis, except the signature. I took the inventory, assisted by the clerks in the store, Davis & Barton the assignors, and I think by John S. Parker (printed record page 24), and John S. Parker testified that the goods were inventoried at New York prices. (Printed record page 75.)

The bill of sale was inadmissible for the following reasons:

I. It did not appear that the goods therein described were the same as those inventoried and counted on in the declaration.

II. The admission of such an instrument is governed by the same general rules as regulate the admission of private wit-

ness and memoranda in evidence — and regarded in that light, it was clearly incompetent.

It does not appear *by whom* the bill was made.

It does not appear that the number and quality of goods are therein correctly stated.

It does not appear that the prices affixed to those goods were correct.

A private writing or memorandum can in no case be admitted as evidence of facts stated in it, unless it first appear by whom it was made; that it was intended to be and was made correctly; that it was made in the ordinary and usual course of business, and that the witness cannot upon reference to the memorandum recollect the facts stated in it.

In such cases, the memorandum is admissible as auxiliary proof merely.

Halsey vs. Sinsebaugh, 15 N. Y. Rep. 485.
Russell vs. Hud. R. RR. Co. 17 N. Y. R. 140.

The bill of sale was made by other parties than the witness. Davis & Barton and Parker, who made the inventory, should have been called to testify to its accuracy, since its correctness could not be established by any other persons than themselves. It is, therefore, mere hearsay evidence and clearly incompetent.

Kent vs. Garvin, 1 Gray (Mass.) 148.
Stiles et al. vs. Homer et al. 21 Conn.
Commonwealth vs. Eastman, 1 Cushing 189.
Eastman vs. Martin, N. H. 152.
Brewster vs. Doane, et al. 2 Hill 537.

See also *Butler vs. Benson*, 1 Barbour (N. T.) 535.
Feeter vs. Heath, 11 Wend. 477.
Merrill vs. Ithaca & Os. RR. Co. 16 Wen. 585
VanDyke vs. Thayer, 19 Wend. 162.
Bank of Commerce vs. Culver, 2 Hill 531.
Lawrence vs. Butler, 5 Wend. 531.
Green vs. Brown, 3 Barb. 123.
Huff vs. Bennett, 2 Selden 337.
Moore vs. Pearson, 6 Watts & Serg. 51.
Webster vs. Clark, 10 Foster (N. H.) 245.
Holliday vs. Martinet, 20 Johns. 168.
Butler *vs. Wright*, 2 Wend. 369.
Hart vs. Wilson, 2 Wend. 369.
Nichols vs. Goldsmith, 7 Wend. 160.
Wilson vs. Seedon, 6 Cowen 162.
1 Greenleaf's Ev. sec. 436–7 et seq.
Lewis v. Kramer, 3 Maryland 265.
Williams vs. Kelsey, 6 Geo. 365.
Clough vs Little, 3 Rich 353.
Heartt vs. Hummell, 3 Barr 414.
Schermerhorn vs. Schermerhorn, 1 Wend. 119.
Mooers vs. Bunker, 9 Foster 420.
Putnam vs. Goodall, 11 Foster 419.
Eastman vs. Moulton, 3 N. Hamp. 156.
Haven vs. Wendell, 11 N. Hamp. 112.
Watson v. Walker, 2 Foster 474.
Newell vs. Roberts, 13 Conn. 63.
Smith vs. Vincent, 15 Conn. 63.
Kissler vs. McConachy, 1 Rawle 441.
McCoy vs. Lightner, 2 Watts, 350–1.

III. The value of the goods at the time of the sale from Smith to the plaintiffs was no evidence of their value at the time of their alleged conversion by the defendant.

The admission of such a memorandum was establishing an incorrect basis upon which the jury were to estimate damages. The sale of the goods at Janesville occurred some length of

time before they were received by the defendant, and even if it be conceded that the bill of sale gives their true value *at that time*, it does not follow that the value was the same when the alleged conversion took place.

But nothing appears in the case to show how that valuation was arrived at.

The measure of damages in actions of trover, is the value of the property alleged to have been converted *at the time of the conversion* or at any time subsequent, before the commencement of suit.

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